



The 2023 Factbook

Children's access to
justice & restorative care



Our Work

HAQ believes:

There is a need for the realisation of human rights of children through policy, law and action. Our aim is to look at the CHILD in an integrated manner where every child's rights are recognised and promoted without discrimination.

The recognition, protection and promotion of three rights form the cornerstone of HAQ's work.

They are – **Right to Survival, Right to Childhood and Right to Equal Opportunity.**

These rights we feel form the basis of all other rights, and by ensuring them we can create the atmosphere for accessing and ensuring the other rights that every child must have.

HAQ aims at: Building a holistic understanding of child rights and exploring areas of concern that directly or indirectly affect children and their rights.

HAQ's objective: To mainstream child rights in all development planning & political agenda, locally, nationally and globally.

HAQ's core value: Place cause before the organisation and organisation before self.



About this Factbook (2023)

The following pages carry powerful insights drawn from profiles of 511 children between 14 November, 2012 and 28 February, 2023.

The factbook is broken into 11 factsheets that look at the profiles of children who experienced abuse, the proximity of those accused, and the legal aspects of proceeding, acquittal, conviction, and bail. A new factsheet no. 8 on challenges with rest to FSL reports has been added this time.

Each factsheet includes relevant data-points to provide insights & analysis of the findings. The document includes stories in certain sections that will provide the readers facts on what children experience, the significance of delivering legal rights to them, and how collaboration and partnership can make a difference.

This Factbook is the latest edition of the factsheets that HAQ documents with a wide audience in mind that include those who work with children, rights activists, lawyers, students, researchers, the media, the world's citizens to whom the innocence of childhood is of utmost importance and who have made it their mission to invest in the wellbeing of children today for a safer tomorrow.

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Profile of Child Survivors & Case Referral

This factsheet outlines the profiles of 511 child survivors, providing insights on how the cases were referred to HAQ. It includes 7 tables on gender & age distribution of children, sources of referral & case intake, cases referred by Child Welfare Committees, case distribution across Delhi's Police Stations and Courts.

⇒ AGE GROUP

- For every 10 cases received, ratio of male to female is 1:9.
- While 88% (452/511) cases are of female children, 32% (146/452) of them belong to the age group of 15-18 years: the highest amidst cases of females
- For boys, 44% (26/59) of the cases are in the 6-10 year age group: the highest amidst cases of males

⇒ HOW HAQ RECEIVES INFORMATION

- Child Welfare Committees (CWCs), NGOs, and Shelter Homes form the larger source from where cases are referred to HAQ - **93%**
- Other sources include the Court Staff, Family, Police, through court orders and individuals, and suo-moto

⇒ CASES FROM CWCs

- CWCs referred 86% of the 511 cases
- Most cases were referred by the CWC VIII, IV, III and VI located at Kalkaji, Mayur Vihar, Sewa Kutir and Rohini (Avantika)

Table 1:
GENDER & AGE DISTRIBUTION OF CHILDREN

| Age Group (in years) | Male | Female | Total | Children in different Age Groups (%) |
|------------------------------|------------|------------|-------------|--------------------------------------|
| 0 to 3 | 0 | 8 | 8 | 2% |
| 3 to 6 | 4 | 38 | 42 | 8% |
| 6 to 10 | 26 | 84 | 110 | 22% |
| 10 to 12 | 6 | 57 | 63 | 12% |
| 12 to 15 | 17 | 119 | 136 | 27% |
| 15 to 18 | 6 | 146 | 152 | 30% |
| Total No. of Children | 59 | 452 | 511 | 100% |
| Percentage | 12% | 88% | 100% | |

Table 2:
SOURCE OF REFERRAL AND CASE INTAKE

| Source | Total No. of Children |
|-------------------|-----------------------|
| CWC | 438 |
| NGOs/Shelter Home | 20 |
| Shelter Home | 18 |
| Court/Court Staff | 8 |
| Family | 5 |
| Police | 7 |
| Suo-moto | 6 |
| Individuals | 8 |
| DCW | 1 |
| Total | 511 |

Table 3:
CASES REFERRED BY CHILD WELFARE COMMITTEES

| Name of CWCs | Total No. of Children |
|-------------------------------------|-----------------------|
| CWC VIII: Kalkaji | 106 |
| CWC IV: Mayur Vihar | 70 |
| CWC III: Sewa Kutir | 68 |
| CWC VI: Rohini (Avantika) | 67 |
| CWC II: Lajpat Nagar | 41 |
| CWC IX: Gole Market | 21 |
| CWC V: Dilshad Garden | 20 |
| CWC VII: Nirmal Chhaya (South West) | 18 |
| CWC X: Alipur | 17 |
| CWC I: Nirmal Chhaya (West) | 10 |
| Total | 438 |

Profile of Child Survivors & Case Referral

Table 4:
**CASE DISTRIBUTION AS PER POLICE DISTRICTS AND
POLICE STATIONS**

| Police District | Police Station | No. of Cases |
|------------------------|----------------------------|--------------|
| Central | Anand Parbat | 7 |
| | Patel Nagar | 5 |
| | Chandni Mahal | 4 |
| | Hauz Qazi | 3 |
| | Prasad Nagar | 3 |
| | I.P. Estate | 2 |
| | Nabi Karim | 2 |
| | Pahar Ganj | 2 |
| | D.B.G. Road | 1 |
| | Jama Masjid | 1 |
| | Kamla Market | 1 |
| | Ranjit Nagar | 1 |
| Central Total | | 32 |
| Dwarka | Uttam Nagar | 3 |
| | Dwarka North | 2 |
| | Najafgarh | 2 |
| | Baba Hari Dass Nagar | 1 |
| | Chhawala | 1 |
| | Dwarka Sector-23 | 1 |
| | Mohan Garden | 1 |
| Dwarka Total | | 11 |
| East | Mayur Vihar PH-1 | 15 |
| | Ghazipur | 5 |
| | New Ashok Nagar | 5 |
| | Madhu Vihar | 4 |
| | Pandav Nagar | 4 |
| | Kalyan Puri | 3 |
| | Preet Vihar | 3 |
| | Jagat Puri | 2 |
| | Mandawali | 2 |
| | Mandwali Fazalpur | 2 |
| | Patparganj Industrial Area | 2 |
| | Laxmi Nagar | 1 |
| | Shakar Pur | 1 |
| East Total | | 49 |
| New Delhi | Chanakya Puri | 8 |
| | South Avenue | 2 |
| | South Campus | 2 |
| | Mandir Marg | 1 |
| | North Avenue | 1 |
| | Tughlak Road | 1 |
| New Delhi Total | | 15 |

| Police District | Police Station | No. of Cases |
|-------------------------|--------------------|--------------|
| North | Subzi Mandi | 7 |
| | Wazirabad | 5 |
| | Civil Lines | 4 |
| | Kotwali | 4 |
| | Sarai Rohilla | 4 |
| | Kashmere Gate | 3 |
| | Burari | 2 |
| | Maurice Nagar | 2 |
| | Gulabi Bagh | 1 |
| | Roop Nagar | 1 |
| | Sadar Bazar | 1 |
| | Timar pur | 1 |
| | North Total | |
| North East | Gokul Puri | 2 |
| | Jafrabad | 2 |
| | Karawal Nagar | 2 |
| | Nand Nagari | 2 |
| | New Usman Pur | 2 |
| | Bhajan Pura | 1 |
| | Harsh Vihar | 1 |
| | Jyoti Nagar | 1 |
| | Khajuri Khas | 1 |
| | Seelam Pur | 1 |
| | Welcome | 1 |
| North East Total | | 16 |
| North West | Keshav Puram | 8 |
| | Adarsh Nagar | 6 |
| | Ashok Vihar | 6 |
| | Jahangir Puri | 6 |
| | Subhash Place | 5 |
| | Bharat Nagar | 4 |
| | Mahendra Park | 4 |
| | Shalimar Bagh | 4 |
| | Model Town | 3 |
| | Maurya Enclave | 1 |
| | Mukherjee Nagar | 1 |
| | Rani Bagh | 1 |
| North West Total | | 49 |

Profile of Child Survivors & Case Referral

Table 4 Continues CASE DISTRIBUTION AS PER POLICE DISTRICTS AND POLICE STATIONS

| Police District | Police Station | No. of Cases | Police District | Police Station | No. of Cases |
|--------------------------|-----------------------------|--------------------|-------------------------|-------------------------|--------------|
| Outer | Aman Vihar | 9 | South | Sangam Vihar | 12 |
| | Nihal Vihar | 5 | | Mehrauli | 11 |
| | Paschim Vihar West | 5 | | Fatehpur Beri | 9 |
| | Kanjhawala | 4 | | Ambedkar Nagar | 7 |
| | Mangol Puri | 3 | | Neb Sarai | 7 |
| | Nangloi | 3 | | Malviya Nagar | 6 |
| | Sultan Puri | 3 | | Hauz Khas | 4 |
| | Mundka | 2 | | Saket | 4 |
| | Raj Park | 2 | | Sarojini Nagar | 4 |
| | Ranhola | 2 | | Tigri | 4 |
| Outer Total | 38 | Kotla Mubarkpur | | 3 | |
| Outer North | Narela industrial Area | 5 | | Lodhi Colony | 2 |
| | Swaroop Nagar | 5 | | Maidan Garhi | 2 |
| | Alipur | 3 | | Safdarjung Enclave | 2 |
| | Bhalswa Dairy | 3 | | South Campus | 2 |
| | Bawana | 2 | South Total | 79 | |
| | Shahbad Dairy | 1 | South East | Govind Puri | 22 |
| Outer North Total | 19 | Sarita Vihar | | 13 | |
| Railways | Anand Vihar Railway Station | 1 | | Jamia Nagar | 10 |
| | New Delhi Railway Station | 1 | | Okhla Industrial Estate | 10 |
| | Old Delhi Railway Station | 1 | | Badarpur | 8 |
| Railways Total | 3 | Hazrat Nizamuddin | | 7 | |
| Rohini | Narela | 7 | | Sunlight Colony | 6 |
| | Prem Nagar | 6 | | Amar Colony | 5 |
| | Vijay Vihar | 5 | | Jait Pur | 5 |
| | Prashant Vihar | 4 | | Pul Prahald Pur | 4 |
| | Budh Vihar | 3 | Kalindi Kunj | 2 | |
| | Begum Pur | 2 | Lajpat Nagar | 2 | |
| | North Rohini | 2 | Shaheen Bagh | 1 | |
| | Samai Pur Badli | 2 | South East Total | 95 | |
| | K.N. Katju Marg | 1 | South West | Kapashera | 5 |
| | South Rohini | 1 | | Vasant Kunj South | 3 |
| Rohini Total | 33 | Palam Village | | 2 | |
| Shahdara | GTB Enclave | 3 | | Vasant Kunj North | 2 |
| | Gandhi Nagar | 2 | | Vasant Vihar | 2 |
| | Geeta Colony | 2 | | R.K. Puram | 1 |
| | Anand Vihar | 1 | Sagar Pur | 1 | |
| | Farsh Bazar | 1 | South West Total | 16 | |
| | Krishna Nagar | 1 | West | Khyala | 3 |
| | Seema Puri | 1 | | Punjabi Bagh | 3 |
| | Vivek Vihar | 1 | | Inder Puri | 2 |
| Shahdara Total | 12 | Kirti Nagar | | 1 | |
| | | West Total | 9 | | |
| | | Grand Total | 511 | | |

Profile of Child Survivors & Case Referral

⇒ POLICE DISTRICT & POLICE STATION WISE CASES (Table 4)

- Cases fall under 16 Police Districts, 149 Police Stations
- South-East, South, East and North West Districts have most cases - 53% (272/511)



⇒ CASES AS PER COURTS (Table 5)

- Saket, Rohini, Tis Hazari, and Karkardooma courts have most cases - 79% (403/511)

Table 5:

CASE DISTRIBUTION AS PER COURTS

| Court Complex | Special Court | No. of Cases |
|--------------------------|---|--------------|
| Dwarka (16 Cases) | Court of ASJ/FTSC/POCSO-02 (South West) | 2 |
| | Court of ASJ/FTSC/POCSO-01 (South West) | 3 |
| | Court of ASJ/FTSC/POCSO-03 (South West) | 5 |
| | Court of ASJ-1 (South West) | 5 |
| | Court of ASJ-4 (South West) | 1 |
| Karkardooma (71 Cases) | Court of ASJ-1 (East) | 16 |
| | Court of ASJ-6 (East) | 27 |
| | Court of ASJ-1 (North East) | 8 |
| | Court of ASJ-1 (Shahdara) | 14 |
| | Court of ASJ-6 (Shahdara) | 6 |
| Patiala House (28 Cases) | Court of ASJ-1 (New Delhi) | 28 |
| Rohini (107 Cases) | Court of ASJ-1 (North) | 20 |
| | Court of ASJ-05 (North) | 16 |
| | Court of ASJ/FTSC/ POSCO (North) | 10 |
| | Court of ASJ-1 (North west) | 23 |
| | Court of ASJ-4 (North west) | 18 |
| | Court of ASJ-5 (North west) | 2 |
| | Court of ASJ/FTSC/ POSCO (North West) | 18 |
| Saket (146 Cases) | Court of ASJ-1 (South) | 24 |
| | Court of ASJ-4 (South) | 22 |
| | Court of ASJ-FTCS-POCSO (South) | 16 |
| | Court of ASJ-1 (South East) | 28 |
| | Court of ASJ-4 (South) | 1 |
| | Court of ASJ-6 (South East) | 22 |
| | Court of ASJ-FTCS-POCSO (South East) | 33 |
| Tis Hazari (79 Cases) | Court of ASJ-1 (Central) | 24 |
| | Court of ASJ-5 (Central) | 2 |
| | Court of ASJ/FTSC/ POSCO-02 (Central) | 19 |
| | Court of ASJ-1 (West) | 12 |
| | Court of ASJ-6 (West) | 10 |
| | Court of ASJ-7 (West) | 9 |
| | Court of ASJ/FTSC/ POSCO-02 (West) | 3 |
| JJBs (64 Cases) | JJB I | 29 |
| | JJB II | 17 |
| | JJB III | 13 |
| | JJB IV | 5 |
| | Total | |

Profile of Child Survivors & Case Referral

⇒ KEEPING CHILDREN SECURE

- Between 2012-15, the child's identity was disclosed in 9% cases
- However, a sharp downward trend has been observed 2016 onwards
- Between 2019-23, the identity of children has not been disclosed in any case

Table 6:
CASES OF CHILD'S IDENTITY DISCLOSED

| Year | Total No. of Cases | No. of Cases where Child's Identity is Disclosed | Percentage of Cases Disclosing Child's Identity |
|--------------|--------------------|--|---|
| 2012 | 5 | 2 | 40% |
| 2013 | 15 | 4 | 27% |
| 2014 | 14 | 5 | 36% |
| 2015 | 75 | 29 | 39% |
| 2016 | 51 | 5 | 10% |
| 2017 | 40 | 1 | 3% |
| 2018 | 57 | 3 | 5% |
| 2019 | 57 | 0 | 0% |
| 2020 | 93 | 0 | 0% |
| 2021 | 78 | 0 | 0% |
| 2022 | 26 | 0 | 0% |
| 2023 | 0 | 0 | 0% |
| Total | 511 | 47 | 9% |

Table 7:
TYPE OF IDENTITY DISCLOSED

| Type of Identity disclosed | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | No. of Violations |
|----------------------------|----------|----------|-----------|-----------|-----------|-----------|----------|----------|----------|----------|----------|----------|-------------------|
| Child's Name | 0 | 1 | 20 | 19 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 43 |
| Father's Name | 0 | 2 | 4 | 8 | 15 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 34 |
| Mother's Name | 1 | 3 | 13 | 24 | 38 | 7 | 1 | 0 | 0 | 0 | 0 | 0 | 87 |
| Brother's Name | 1 | 0 | 3 | 5 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 10 |
| Sister's Name | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Grandparent's Name | 0 | 0 | 3 | 6 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 |
| Relative's Name | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| School | 0 | 0 | 1 | 2 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 7 |
| Total | 2 | 6 | 44 | 65 | 60 | 15 | 3 | 0 | 0 | 0 | 0 | 0 | 195 |

⇒ VIOLATIONS IN KEEPING THE IDENTITY CONFIDENTIAL

- In 10% (19/195) cases, the child's identity has been disclosed through identifying a relative or school (mainly between 2014-2017)
- In most cases (45%), the mother's name has been disclosed
- In nearly 22% (43/195) cases the child's name has been disclosed
- However, as indicated in table 6, 2019 to 2023 have recorded zero disclosures in any form

Profile of the Accused and Proximity with the Child

Details of the accused, their proximity with the child, relationship, mapped to the gender and age-group are the focus of this factsheet - with data provided under tables 8-15.

**Table 8:
DETAILS OF THE ACCUSED**

| Nature of Offence | Total No. of Cases | Total No. of Accused | Known Accused | | Stranger | |
|-------------------------------|--------------------|----------------------|---------------|----------------|--------------|----------------|
| | | | No. of Cases | No. of Accused | No. of Cases | No. of Accused |
| PSA | 85 | 109 | 78 | 100 | 7 | 9 |
| APSA | 304 | 412 | 264 | 347 | 40 | 65 |
| SA | 51 | 63 | 43 | 52 | 8 | 11 |
| ASA | 46 | 55 | 43 | 52 | 3 | 3 |
| SH | 21 | 26 | 21 | 26 | 0 | 0 |
| Unnatural Offence u/s 377 IPC | 2 | 2 | 2 | 2 | 0 | 0 |
| Kidnapping u/s 363 IPC | 2 | 4 | 2 | 4 | 0 | 0 |
| Total | 511 | 671 | 453 | 583 | 58 | 88 |

87% (583/671)
of the accused are
known to the child

**Table 9:
PROXIMITY OF ACCUSED WITH THE VICTIM**

| Proximity | No. of Cases | No. of Known Accused |
|--|--------------|----------------------|
| Incest (related by blood, adoption or marriage) | 61 | 70 |
| Close Relatives | 29 | 38 |
| Relatives/Family Friends | 22 | 30 |
| Neighbours | 260 | 319 |
| Friends | 40 | 74 |
| School Staff / Tutor | 16 | 17 |
| Staff of Children's Home | 1 | 1 |
| Employer / Employment Agent | 10 | 15 |
| Co-worker | 2 | 5 |
| Others (Driver, Tantrik, Friend's Father-in-Law) | 12 | 14 |
| Total | 453 | 583 |

55% of known
accused are
neighbours (319/583)

24% comprise of
close and distant
relatives, family
friends & other
friends (142/583)

12% are related to
the child by blood,
adoption or marriage
(70/583)

Profile of the Accused and Proximity with the Child

Table 10:
AGE-GROUP & CLOSE PROXIMITY BETWEEN CHILD AND THE ACCUSED

| Age-Group (in years) | Incest | | Close Relative | | Relative / Family Friend | | Total | |
|-------------------------|--------------|----------------|----------------|----------------|--------------------------|----------------|--------------|----------------|
| | No. of Cases | No. of Accused | No. of Cases | No. of Accused | No. of Cases | No. of Accused | No. of Cases | No. of Accused |
| 0 to 3 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 1 |
| 3 to 6 | 0 | 0 | 2 | 3 | 0 | 0 | 2 | 3 |
| 6 to 10 | 4 | 4 | 6 | 7 | 3 | 3 | 13 | 14 |
| 10 to 12 | 9 | 10 | 4 | 4 | 2 | 2 | 15 | 16 |
| 12 to 15 | 23 | 25 | 5 | 11 | 7 | 9 | 35 | 45 |
| 15 to 18 | 25 | 31 | 11 | 12 | 10 | 16 | 46 | 59 |
| Total | 61 | 70 | 29 | 38 | 22 | 30 | 112 | 138 |

of those in close proximity...

51% (70/138)

of the accused are related to the child by blood, adoption or marriage

relationship by blood, adoption or marriage between child and accused is found in ...

63% (10/16) cases of children aged 10-12 years; followed by **56%** (23/45) in 12-15 years; **53%** (31/59) in 15-18 years; and, **29%** (4/14) in 6-10 years age group

Table 11:
INCEST
(NUMBER OF CASES, ACCUSED AND RELATIONSHIP WITH THE CHILD)

| Relationship | No. of Cases | No. of Accused |
|-------------------|--------------|----------------|
| Biological Father | 36 | 40 |
| Step Father | 18 | 20 |
| Adoptive Father | 1 | 1 |
| Brother | 6 | 9 |
| Total | 61 | 70 |

57% (40/70)

cases referred under incest abuse accuse the biological father

29% (20/70)

have the step father as the accused

among the close relatives...

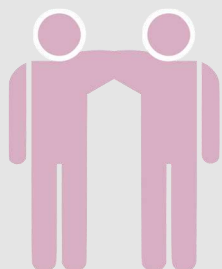
82% (31/38)

accused are Uncles/Aunts (paternal or maternal)

Table 12:
CLOSE RELATIVES
(NUMBER OF CASES, ACCUSED AND RELATIONSHIP WITH THE CHILD)

| Relationship | No. of Cases | No. of Accused |
|-----------------------|--------------|----------------|
| Cousin (Paternal) | 5 | 5 |
| Paternal Uncle / Aunt | 12 | 19 |
| Maternal Uncle / Aunt | 10 | 12 |
| Grandfather | 2 | 2 |
| Total | 29 | 38 |

Profile of the Accused and Proximity with the Child



among distant relatives & family friends...

23% (5/22) cases indict friends of either parent or sibling

another **23%** (5/22) implicate friends of relatives or family

and yet another **23%** (5/22) indict brother-in-law

Table 13:
RELATIVE / FAMILY FRIEND
(NUMBER OF CASES, ACCUSED AND RELATIONSHIP WITH THE CHILD)

| Relationship | No. of Cases | No. of Accused |
|----------------------------|--------------|----------------|
| Bua's Son | 1 | 1 |
| Cousin | 1 | 2 |
| Bua's daughter's son | 1 | 3 |
| Brother-in-Law | 5 | 9 |
| Father's Friend | 2 | 2 |
| Mother's Friend | 2 | 2 |
| Brother's Friend | 1 | 1 |
| Chachi's Friend | 1 | 2 |
| Bua's Friend | 2 | 2 |
| Mama's Friend | 1 | 1 |
| Family Friend | 1 | 1 |
| Tai's sister's son | 1 | 1 |
| Bua's brother-in-law's son | 3 | 3 |
| Total | 22 | 30 |

Table 14:
NEIGHBOUR
(NUMBER OF CASES, ACCUSED AND TYPE OF NEIGHBOUR)

| Type of Neighbour | No. of Cases | No. of Accused |
|------------------------------------|--------------|----------------|
| Landlord | 7 | 10 |
| Shopkeeper/Service Provider/Vendor | 19 | 21 |
| Other Neighbours | 234 | 288 |
| Total | 260 | 319 |

90% (288/319)

of the neighbours accused are persons other than local shopkeepers, vendors and landlords

7% (21/319)

are local shopkeepers & vendors

Table 15:
GENDER AND AGE PROFILE OF THE ACCUSED

| Age Group (in years) | Male | Female | Total | Percentage of Accused in Different Age Groups |
|----------------------|------------|-----------|------------|---|
| Below 18 | 91 | 1 | 92 | 14% |
| 18 to 25 | 181 | 9 | 190 | 28% |
| 26 to 35 | 171 | 15 | 186 | 28% |
| 36 to 45 | 111 | 13 | 124 | 19% |
| 46 to 55 | 49 | 2 | 51 | 8% |
| 56 to 65 | 13 | 1 | 14 | 2% |
| 66 to 75 | 7 | 0 | 7 | 1% |
| 76 to 85 | 4 | 1 | 5 | 1% |
| Total | 627 | 42 | 669 | 100% |

Note: 2 Accused are still absconding

94% (629/671) of the accused are **MALE**

74% (463/627) of these men are in the age group of 18-45 years

67% FEMALE accused are in the age group of 26-45 years

Disclosure, Information to the Police & Formal Complaint

Tables 16-18 categorise the information under who the incident is disclosed to and the type of persons who inform and complain about the incident to the police. The tables also cover reporting in incidents of incest by fathers and brothers.

Table 16:
RELATIONSHIP-WISE DETAILS OF DISCLOSURE, INFORMANT & COMPLAINANT (ALL CASES)

| Person/Agency | Disclosure | Informant | Complainant |
|---|------------|------------|-------------|
| Mother | 288 | 237 | 173 |
| Father | 40 | 54 | 60 |
| Friend | 18 | 7 | 4 |
| Police | 35 | 15 | 3 |
| Stranger | 19 | 10 | 9 |
| Aunt | 11 | 5 | 2 |
| Sister | 22 | 10 | 8 |
| School Teacher | 7 | 3 | 0 |
| Principal | 0 | 1 | 1 |
| Grandparent | 7 | 6 | 7 |
| Other Relatives | 6 | 4 | 2 |
| Both Parents | 8 | 5 | 2 |
| Neighbour | 11 | 15 | 3 |
| Childline Staff | 2 | 5 | 0 |
| Employer | 3 | 3 | 1 |
| NGO | 5 | 7 | 0 |
| Brother | 3 | 2 | 1 |
| Uncle | 2 | 4 | 2 |
| Tuition Teacher | 1 | 0 | 0 |
| Self | 0 | 95 | 223 |
| Suo moto Cognizance by Court | 0 | 2 | 2 |
| Doctor | 14 | 12 | 1 |
| CWC | 1 | 1 | 1 |
| Co-Victim | 3 | 0 | 3 |
| Shelter Home staff | 4 | 5 | 3 |
| Child did not disclose to any one (witnessed or reported by others or disclosure after child's death) | 1 | 2 | 0 |
| Colleagues | 0 | 1 | 0 |
| Total | 511 | 511 | 511 |



- Mothers are the key recipients of disclosures made by children about sexual abuse
- As a close relative, fathers are the second key recipients of disclosures and source of information or complaint to the police
- 44% (223/511) of the times, children file the police complaint themselves
- Only in 3% (17/511) cases the information to police is given by NGOs, including Childline and Shelter Home Staff

Disclosure, Information to the Police & Formal Complaint

Table 17:
INCEST ABUSE BY FATHER

| Person/Agency | Disclosure | Informant | Complainant |
|------------------------------|------------|-----------|-------------|
| Father | 0 | 0 | 1 |
| Mother | 35 | 25 | 14 |
| Brother | 1 | 1 | 0 |
| Sister | 2 | 1 | 2 |
| Aunt | 2 | 1 | 1 |
| Police | 2 | 0 | 1 |
| School Teacher | 2 | 3 | 0 |
| Stranger | 1 | 1 | 0 |
| Self | 0 | 12 | 33 |
| NGO | 2 | 5 | 0 |
| Suo Moto Cognizance by court | 0 | 2 | 2 |
| Co-victim | 2 | 0 | 0 |
| Friend | 2 | 0 | 0 |
| Friend's Father | 0 | 0 | 1 |
| Doctor | 4 | 2 | 0 |
| Childline | 0 | 1 | 0 |
| Neighbour | 0 | 1 | 0 |
| Total | 55 | 55 | 55 |

- Incest abuse by father comprises 11% of all cases (55/511) or 12% of cases where the accused is a person known to the child (55/453)
- In cases of incest abuse by father, the mother has been the informant in 45% (25/55) cases & complainant in 25%

Table 18:
INCEST ABUSE BY BROTHER

| Person/Agency | Disclosure | Informant | Complainant |
|----------------|------------|-----------|-------------|
| Self | 0 | 4 | 6 |
| Mother | 2 | 1 | 0 |
| Friend | 1 | 0 | 0 |
| Employer | 0 | 1 | 0 |
| Brother-in-Law | 1 | 0 | 0 |
| Police | 1 | 0 | 0 |
| School Teacher | 1 | 0 | 0 |
| Total | 6 | 6 | 6 |

- Incest abuse by brother comprises only 1% of all cases (6/511) or cases where accused is a known person



- In cases of incest abuse by brother, the child has been the informant in 67% (4/6) cases & complainant in all

Change in the Nature of Offence from FIR to Charge sheet to Framing of Charges

The factsheet looks at the time taken for filing of charge sheet by the police. Filing of charge sheet implies completion of police investigation. Once the police complete their investigation and file their report (which is commonly referred to as the charge sheet), the court discusses the charges based on the police investigation report and accordingly finalises the charges on which the trial will be conducted against the accused.

There are cases where the nature of offence changes from what is registered in the FIR to the sections applied in the charge sheet after the police completes its investigation and further at the time of framing of charges for trial by the court. Such change in the nature of offence between these stages indicates lapses on the part of the police in investigation as well as application of law and mind.

Context

A case of abuse of a child below the age of 12 years is treated in law as a case of aggravated form of abuse on account of the child's age - aggravated penetrative sexual assault or aggravated sexual assault. However, the police do not always book the case as such.

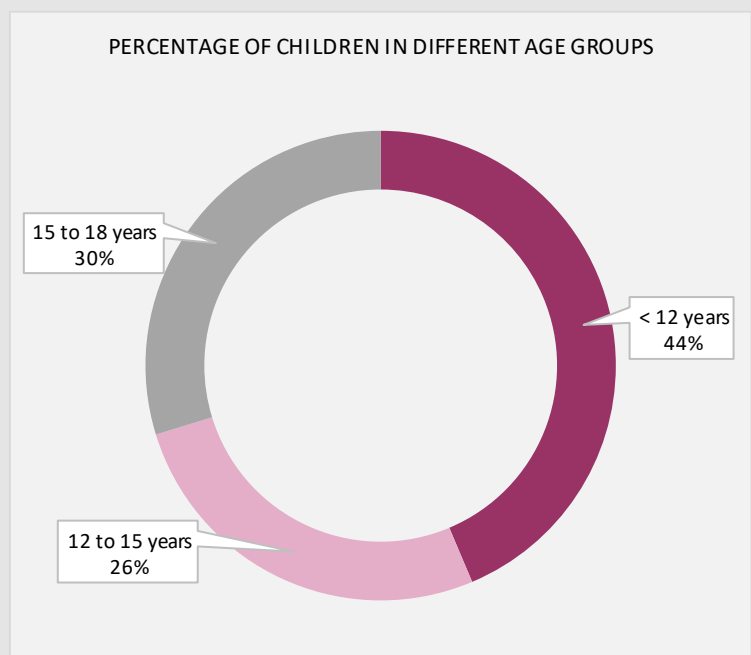
Similar situation is found in some cases where the accused is a person trusted by the child, or living in a shared household, or related to the child by blood/ marriage/ adoption, or a person in a position of authority over the child.

In many such cases, it is at the stage of framing of charges by the court that the appropriate provisions are applied.

Sometimes, even at that stage, the court may fail to take note of the discrepancy.

44% (223/511) of the children are under the age of 12 years

27% (136/511) are between the ages of 12-15 years



Change in the Nature of Offence from FIR to Charge sheet to Framing of Charges

Table 19:
TIME TAKEN TO FILE CHARGE SHEET FROM THE DATE OF FIRST ARREST MADE IN THE CASE

| Number of days | Children < 12 years | Children aged 12 to 18 years | All Children |
|---|---------------------|------------------------------|--------------|
| Within 30 days | 22 | 24 | 46 |
| 30 to 60 days | 92 | 101 | 193 |
| 60 to 90 days | 75 | 115 | 190 |
| 90 to 120 days | 13 | 19 | 32 |
| 120 to 150 days | 1 | 8 | 9 |
| 150 to 180 days | 0 | 3 | 3 |
| 180 to 210 days | 2 | 4 | 6 |
| Above 210 days | 13 | 10 | 23 |
| Total | 218 | 284 | 502 |
| Average time taken | 81 | 77 | 79 |
| Charge sheet filed within 90 days of First Arrest (in percent) | 87% | 85% | 85% |

Note - In 9 cases, though charge sheet has been filed, time taken for filing charge sheet cannot be calculated as the accused is yet to be arrested

- 85% of the charge sheets are filed within 90 days of the first arrest made in the case
- Charge sheet is filed within 90 days in 87% cases of children under 12 years and 85% cases of children between 12 to 18 years
- An average of 79 days is taken to file the charge sheet
- In 5% cases (23/502) filing of charge sheet has taken more than 210 days



Change in the Nature of Offence from FIR to Charge sheet to Framing of Charges

Table 20:
CHANGE IN RECORDING NATURE OF OFFENCE

| Nature of Offence | No. of Cases (as per FIR) | No. of Cases (at the stage of Framing of Charges) | Charges yet to be framed | Cases Discharged before framing of charges | Abated before framing of charges | Accused Pleaded guilty | Police Filed Closure Report before framing of charges |
|-------------------------------|---------------------------|---|--------------------------|--|----------------------------------|------------------------|---|
| PSA | 85 | 51 | 5 | 0 | 0 | 0 | 0 |
| APSA | 304 | 321 | 23 | 0 | 1 | 0 | 2 |
| SA | 51 | 23 | 6 | 0 | 1 | 1 | 0 |
| ASA | 46 | 50 | 9 | 1 | 0 | 0 | 0 |
| SH | 21 | 10 | 4 | 1 | 0 | 0 | 0 |
| Unnatural Offence u/s 377 IPC | 2 | 1 | 0 | 0 | 0 | 0 | 0 |
| Kidnapping u/s 363 IPC | 2 | 1 | 0 | 0 | 0 | 0 | 0 |
| Total | 511 | 457 | 47 | 2 | 2 | 1 | 2 |

Out of 511 cases, charges are framed in 457 cases. Out of these 457 cases, the **nature of offence** registered by the police in the FIR stands **changed in 20% (92/457) cases** at the time of framing of charges by the court

Table 20A:
FROM FIR TO FRAMING OF CHARGES BY COURT: CHANGE IN NATURE OF OFFENCE

| Nature of Offence | Total Cases where Charges have been Framed | No. of Cases where the Nature of Offence changed from the stage of FIR to Framing of Charges by the Court |
|-------------------|--|---|
| PSA | 51 | 40 |
| APSA | 321 | 10 |
| SA | 23 | 24 |
| ASA | 50 | 9 |
| SH | 10 | 7 |
| 377 IPC | 1 | 1 |
| 363 IPC | 1 | 1 |
| Total | 457 | 92 |

Table 20A indicates how the number of cases for different types of offences changes in the criminal justice process from the time of registration of FIR to filing of charge sheet by police to framing of charges by the court

Change in the Nature of Offence from FIR to Charge sheet to Framing of Charges

TABLE 20B:
THE EXACT CHANGE IN NATURE OF OFFENCE FROM FIR TO FRAMING OF CHARGES

| Offence as per FIR | PSA | APSA | SA | ASA | SH | 377 IPC | 363 IPC | Total |
|--|--|------|-----|-----|----|---------|---------|-------|
| No. of Cases | 85 | 304 | 51 | 46 | 21 | 2 | 2 | 511 |
| | Change in Nature of Offence (changes are in dark pink colour) | | | | | | | |
| Offence as per Charges Framed | PSA | 40 | 7 | 2 | 0 | 0 | 1 | 51 |
| | APSA | 39 | 267 | 7 | 8 | 0 | 0 | 321 |
| | SA | 0 | 0 | 19 | 1 | 3 | 0 | 23 |
| | ASA | 1 | 3 | 14 | 28 | 4 | 0 | 50 |
| | SH | 0 | 0 | 2 | 0 | 9 | 0 | 10 |
| | 377 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| | 363 IPC | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Charges not framed | 5 | 23 | 6 | 9 | 4 | 0 | 0 | 47 |
| Cases discharged before framing of charges | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 2 |
| Abated before framing of charges | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 2 |
| Police Filed Closure Report before framing of charges | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 2 |

- Among cases registered for penetrative sexual assault, the nature of offence stands changed to aggravated penetrative sexual assault in 46% cases (39/85). In 18 out of these 39 cases (46%) the child was below the age of 12 years at the time of commission of offence.
- Of the 51 cases registered as sexual assault, in 14% (7/51) the nature of offence stands changed to aggravated penetrative sexual assault at the time of framing of charges by the court and in 27% (14/51) it has changed to aggravated sexual assault. In 5 out of 7 cases that have been converted to aggravated penetrative sexual assault, the child was below 12 years at the time of commission of offence. In 10 out of 14 cases that have been converted to aggravated sexual assault, the child was below 12 years at the time of commission of offence.
- Of the 21 FIRs of sexual harassment, in 19% (4/21) cases charges are framed by the court for aggravated sexual assault as the child was below 12 years of age at the time of commission of offence. Another 14% (3/21) cases of sexual harassment stand converted to sexual assault at the time of framing of charges.

Change in the Nature of Offence from FIR to Charge sheet to Framing of Charges

REASONS FOR CHANGE IN THE NATURE OF OFFENCE

Table 20B (i)

| <i>Nature of offence changed from Penetrative Sexual Assault to Aggravated Penetrative Sexual Assault</i> | <i>No. of Cases</i> |
|---|---------------------|
| Age of child below 12 years | 18 |
| Incest case | 4 |
| Abuse by person in position of authority e.g. school teacher or staff of shelter home | 0 |
| Abuse by person trusted by child | 2 |
| Combination of any of the above | 7 |
| Repeated abuse | 5 |
| Others | 3 |
| Total | 39 |

Table 20B (ii)

| <i>Nature of offence changed from Sexual Assault to Aggravated Penetrative Sexual Assault</i> | <i>No. of Cases</i> |
|---|---------------------|
| Age of child below 12 years | 5 |
| Incest case | 0 |
| Abuse by person in position of authority e.g. school teacher or staff of shelter home | 1 |
| Abuse by person trusted by child | 1 |
| Combination of any of the above | 0 |
| Total | 7 |

Table 20B (iii)

| <i>Nature of offence changed from Sexual Assault to Aggravated Sexual Assault</i> | <i>No. of Cases</i> |
|---|---------------------|
| Age of child below 12 years | 10 |
| Incest case | 0 |
| Abuse by person in position of authority e.g. school teacher or staff of shelter home | 1 |
| Abuse by person trusted by child | 0 |
| Combination of any of the above | 2 |
| Repeated abuse | 1 |
| Total | 14 |

Table 20B (iv)

| <i>Nature of offence changed from Sexual Harassment to Aggravated Sexual Assault</i> | <i>No. of Cases</i> |
|--|---------------------|
| Age of child below 12 years | 3 |
| Combination of any of the above | 1 |
| Total | 4 |

Bail

This factsheet records instances amongst the profiles about 'when' the bail is granted to the accused. Table 23 further records grounds for grant of bail.

Table 21:
BAIL GRANTED PRIOR TO CHILD'S TESTIMONY

| Age Group (in years) | Before Filing Charge Sheet | Before Framing of Charges | Before Child's Testimony | Total |
|----------------------|----------------------------|---------------------------|--------------------------|-----------|
| 0 to 3 | 0 | 0 | 0 | 0 |
| 3 to 6 | 3 | 3 | 2 | 8 |
| 6 to 10 | 3 | 6 | 1 | 10 |
| 10 to 12 | 2 | 7 | 1 | 10 |
| 12 to 15 | 8 | 13 | 1 | 22 |
| 15 to 18 | 7 | 12 | 5 | 24 |
| Total | 23 | 41 | 10 | 74 |

- In 14% cases, bail is granted to the accused prior to the child's testimony in court (74/511)
- 38% (28/74) of these are cases of children under the age of 12 years
- 91% (67/74) of the accused bailed are known to the child and their family - 49% (33/67) of whom live in the child's neighbourhood
- 13% (9/67) are child's friend
- 10% (7/67) are school staff or teachers - creating potential for more incidents to occur in school or tuition classes with other children
- Others released on bail include step-fathers, close relatives, employers, landlords and doctors - persons in a position of trust or authority over the child

Table 22:
DETAILS OF ACCUSED IN CASES WHERE BAIL IS GRANTED

| Proximity between Accused and the Child | No. of Cases |
|---|--------------|
| Known | 67 |
| Unknown/Stranger | 7 |
| Total | 74 |
| Break-up of Known Accused | No. of Cases |
| Neighbour | 33 |
| School Staff/Tutor (Teacher/Tutor) | 7 |
| Close relative (4 cousins and 2 paternal uncle) | 6 |
| Employer | 3 |
| Step Father | 2 |
| Friends | 9 |
| Tantrik | 1 |
| Brother | 0 |
| Landlord | 4 |
| Mother's Colleague | 1 |
| Doctor | 1 |
| Total | 67 |

Bail

Table 23:
GROUNDINGS FOR GRANTING BAIL TO THE ACCUSED

| S. No. | Grounds for Granting Bail | Before Charge sheet | From Charge sheet to Framing of Charges | From Framing of Charges to Child's Testimony |
|--|---|---------------------|---|--|
| Anticipatory Bail | | | | |
| 1 | Anticipatory Bail - Considering that the occurrence is alleged to have taken place on 26.11.2015 whereas the FIR was registered on 28.11.2015; accused is about 50 years of age also having grandchildren; has been falsely implicated in the present case; accused pleads his innocence; and nothing is to be recovered from him. Regular bail - Accused is present on anticipatory bail and has filed bail bond/ surety bond along with photocopy of certain documents. | 1 | 1 | |
| 2 | Both the accused persons were granted anticipatory bail by Ld. Predecessor of this court vide order dated 28.10.2016 and 23.12.2016. In view of same, both the accused are admitted to bail. | | 1 | |
| Prolonged custody of the accused, illness or medical condition of the accused or a family member, and/or age of the accused | | | | |
| 3 | Considering facts and circumstances of the case and period of his custody. | 4 | 2 | 2 |
| 4 | In view of the period of custody of the accused and also considering the fact that charge sheet has already been filed and no investigation is pending any further against the applicant/accused, he is admitted to bail. | | 1 | |
| 5 | Considering the age/illness of the accused and the period of his custody. | 2 | 3 | 2 |
| 6 | Considering the period of his judicial custody, no involvement in any other criminal case, and his minor son requiring constant medication and care for Frazer's syndrome. | | 1 | |
| 7 | Wife is due to deliver a child and is in critical condition. | | | 1 |
| 8 | Considering the fact that the accused's four-year-old daughter had suffered serious injuries and in view of photographs filed and treatment papers filed on record, the accused is admitted to interim bail for a period of 15 days. | | 1 | |
| 9 | UTP "P" is eight months pregnant and there is difficulty faced while producing her in the court and during the transportation from Central Jail to Saket Court Lockup. | | 1 | |

Bail

Table 23 continues

GROUNDS FOR GRANTING BAIL TO THE ACCUSED

| S. No. | Grounds for Granting Bail | Before Charge sheet | From Charge sheet to Framing of Charges | Framing of Charges to Child's Testimony |
|---|--|---------------------|---|---|
| Lapses on the part of the investigating agency / IO | | | | |
| 10 | IO has failed to mention any ground for arrest of the accused. | 1 | | |
| 11 | Considering the facts and circumstances of the case where there is no likelihood of filing of FSL result in near future accused cannot be detained in custody as pre-trial punishment for unlimited period. | | 3 | |
| 12 | In the complaint offender was named as "V.D" whereas in the statement recorded under section 164 Cr.P.C offender is named as "T". No time and date have been given when the alleged incident was made by the offender with the prosecutrix. Matter requires further investigations to ascertain whether V.D and T is one person and what was the time and day of incident. | | 1 | |
| 13 | In view of non-filing of chargesheet by the IO for more than 90 days in the present case, the accused is ordered to be released on bail, as per provision of section 167 (2) CrPC. | 1 | | |
| Accused being falsely implicated / contradiction in child's statements | | | | |
| 14 | Considering the totality of the facts and circumstances of the case and the submissions that the accused/ applicants have been falsely implicated by the mother of the prosecutrix cannot be ruled out and giving the benefit of doubt on the case of the complainant the applications are allowed. | 2 | 1 | 1 |
| Past Acquaintance and/or Romantic Relationship | | | | |
| 15 | Though prosecutrix has given her statement u/s 164 CrPC against the accused but letters written by girl show that she is in love with accused. Accused has been in custody. Investigation complete and charge sheet been filed. Case is at the stage of argument on charge. No purpose would be served by keeping the accused in jail. | | 1 | |
| 16 | Child was recovered and brought to Delhi; she was taken to AIIMS for medical examination wherein the sexual history in the MLC suggests that she was in a relationship with the accused. Judge asked the IO to file a detailed reply with respect to role of the main accused and his marital status. | | 1 | |

Bail

Table 23 continues

GROUNDS FOR GRANTING BAIL TO THE ACCUSED

| S. No. | Grounds for Granting Bail | Before Charge sheet | From Charge sheet to Framing of Charges | Framing of Charges to Child's Testimony |
|---------------|--|---------------------|---|---|
| Others | | | | |
| 17 | Accused had to appear for Board Exams. | 1 | | |
| 18 | The nature of allegations against the applicant/accused arise from the close proximity of residence between the accused and the child victim/prosecutrix. It is considered that the applicant/accused has undertaken to shift his address. Investigation is complete. Charge sheet has been filed and the accused has also been charge sheeted. The accused cannot be incarcerated indefinitely as trial is likely to take some more time. | | | 1 |
| 19 | Keeping in view the totality of facts and circumstances of the case and the fact that complainant and applicant/accused are neighbours and the fact that applicant/accused are in JC since 22.01.15 (one week). | 2 | | |
| 20 | Considering the facts and circumstances of the case, role assigned to the applicant and the period of custody. | 1 | | 2 |
| 21 | Considering that the accused has been in custody since almost a month, looking into nature of allegations and that the accused has shifted residence. | 1 | | |
| 22 | Considering the facts and circumstances of the case. | 3 | 4 | 1 |
| 23 | Investigation is complete charge sheet has been filed. This application is stated to be the second bail application as first one was disposed off as dismissed prior to filling of charge sheet. Taking into consideration the facts and material on record, accused/ applicant is ordered to be released on bail. | | 1 | |
| 24 | Considering totality of facts and circumstances, particularly in view of the fact that the accused was not arrested in the course of investigation. | | 1 | |
| 25 | Challan was filed without arrest of accused. Ld. SPP for the State has not opposed this as a ground for bail. In the facts and circumstances of the case, accused is admitted on bail. | | 2 | |
| 26 | There is no material on record to suggest that the CCL post-release would be exposed to moral, physical or psychological danger or would come in association with any known criminal. On the touchstone of section 12 JJ Act 2015 we see no reason for declining the bail application. | 1 | 3 | |

Bail

Table 23 continues

GROUNDS FOR GRANTING BAIL TO THE ACCUSED

| S. No. | Grounds for Granting Bail | Before Charge sheet | From Charge sheet to Framing of Charges | Framing of Charges to Child's Testimony |
|--------|---|---------------------|---|---|
| 27 | Investigation is complete; IO shall be filing the charge sheet during the day or latest by tomorrow; the accused is no longer required for any custodial interrogation. Accused is stated to be in JC since 30.10.2017. | 1 | | |
| 28 | CCL has remained in protective custody in present case for almost 3 months. Considering the overall facts and circumstances and judging the bail applications on the touchstone of section 12 of JJ Act, CCL is admitted to bail. | 2 | | |
| 29 | Considering the entirety of the facts and circumstances, without going into the merits of the case, the bail application is allowed and the applicant/accused is ordered to be released on bail. | | 3 | |
| 30 | Regular bail granted - decongestion of prisons. | | 1 | |
| 31 | Having considered the contents of the complaint and the statements of mother and the prosecutrix u/s 164 CrPC; charge sheet having been filed after conclusion of the investigation; restricted functioning of the court due to outbreak of Covid-19 due to which trial is going to take substantial time to conclude. | | 2 | |
| 32 | Both accused belong to poor strata of the society. The prosecutrix is living in the shelter home under the orders of CWC. The accused persons cannot threaten or influence the witnesses including the prosecutrix. There is no apprehension of the course of justice being thwarted by grant of bail to them. | | 1 | |
| 33 | Copy of the report of the Forensic Laboratory filed by the Investigating Officer, taken on record. Heard further. Record perused. In view of the opinion recorded in the MLC, ruling out the possibility of any insertion into the anal canal and absence of traces of semen in the swab taken, the application is allowed. | | 2 | |
| 34 | In the reply of police official, it has further been mentioned that the accused is not involved in any guidelines of Hon'ble High Court of Delhi dated 04.05.2021 and 11.05.2021; the accused is in JC for about 30 days; the offences are punishable up to 7 years, accordingly, the accused is admitted to interim bail for a period of 30 days (as sought in application). | | 2 | |
| 35 | In view of over all facts and circumstances and that release of CCL is not likely to bring him in moral, physical and psychological danger, CCL hereby released on bail. | | 1 | |

Child's Right to be Heard during Bail Proceedings - The Law and its Implementation

Context

Criminal Law Amendment Act, 2018 and Right to be Heard in Bail Proceedings in cases of Sexual Violence against Children

- No anticipatory bail can be granted under Section 438 of the CrPC in the following cases:
 - rape - Section 376 of the IPC
 - rape of a minor below the age of twelve years - Section 376 AB of the IPC
 - gang rape of a minor below the age of twelve years - Section 375 DB of the IPC
 - gang rape of a minor below the age of sixteen years - Section 376 DA of the IPC
- High Court or Court of Sessions has to give 15 days' notice to the Public Prosecutor about a bail application filed by the accused in cases of rape and gang rape of children below the age of 12 years and 16 years
 - a second proviso is added to sub-section (1) of Section 439 of the CrPC
- No bail application can be heard in the absence of the informant or any person authorised by her/him in cases of rape and gang rape of children below the age of 12 years and 16 years
 - a new sub-section (1A) is added to Section 439 of the CrPC

Getting the Law Implemented

Practice directions issued by the Delhi High Court dated 24.09.2019

- These clearly specified how notice of the bail application was to be served on the informant/her representative by the investigating officer (IO), and such proof of service was directed to be annexed by the IO in their reply to a bail application in rape cases under section 376, 376AB, 376DA or 376DB of the IPC.
- These directions were not extended to cases under the POCSO Act.

Child's Right to be Heard during Bail Proceedings - The Law and its Implementation

Getting the Law Implemented

Reena Jha & Ors. vs. Govt. of NCT of Delhi [W P (C) No. 5011/2017] – A case filed on behalf of aggrieved mothers of minor survivors of sexual abuse, through HAQ: Centre for Child Rights and iProbono

Court held that:

- The Delhi High Court Practice Directions shall mutatis mutandis apply to offences under the POCSO Act
- Where offence is perpetrated by a close family member, notice be issued to CWC and a copy be sent to DSLSA
- A copy of the judgment as well as the "Delhi High Court Practice Directions" of September 2019 (in compliance with Section 439 of the Code of Criminal Procedure, 1973) be sent to all the District Judges, who will be responsible for bringing these to the notice of all the Criminal Courts in Delhi under their respective jurisdictions, and to all Bar Associations in Delhi

Miss G (Minor) through her mother vs. State of NCT & Anr. [CRLMC 1474/2020, CRLMA 6330/2020 & CRLMA 6705/2020] – A case filed through HAQ's panel lawyer Advocate Tara Narula on behalf of a minor victim aggrieved by the grant of interim bail

Court took cognizance of poor compliance of the practice directions as well as Delhi High Court's judgement in WP (C) 5011/2017 and held that:

- Notice be issued to the IO as well as counsel on record of the victim/complainant/informant whenever an accused charged under sections 376(3), 376AB, 376DA or 376DB of the IPC or the provisions of the POCSO Act, moves an application for regular bail or interim bail.
- Court to ascertain service of notice to the victim/complainant/informant by the IO
- Adequate representation be ensured for the victim/complainant/informant through their counsel on record or DSLSA lawyer
- Relevant documents be provided to the victim/complainant/informant to oppose bail
- Judgement be circulated to Commissioner of Police, Director - Prosecution and all District Judges

Child's Right to be Heard during Bail Proceedings - The Law and its Implementation

What has changed...

Three more states have directions laid down by courts for securing a child's right to be heard during bail proceedings in cases under sections 376(3), 376AB, 376DA or 376DB of the IPC or relevant provisions of the POCSO Act:

- **Maharashtra** - Arjun Kishanrao Malge vs. State of Maharashtra & Ors [CRPIL No.5 of 2021]
- **Uttar Pradesh** - State vs. Junaid [Crl Misc Bail App No. 46998 of 2020]
- **Karnataka** - Bibi Ayesha Khanum vs. Union of India [WP No. 2318/2022 (GM-Police)]

- **Delhi** - In Miss G (Minor) through her mother vs. State of NCT & Anr., information received by the Court from the Ld. Registrar General reflected that the complainant did not receive notice of bail application in 73% cases between 22.04.2020 and 23.05.2020.

HAQ's analysis shows improvement since the judgement dated 05.06.2020. Children have received the opportunity to be heard in 90% bail applications dismissed, allowed and pending in the 511 cases supported by HAQ since June 2020.

What remains...

HAQ's analysis also shows that -

- Courts have insisted on **presence of the child in 52% bail applications** dismissed, allowed or pending in 511 cases since June 2020
- Remaining **57% bail applications** were heard in the presence of child's representative

Notices are served to children and their families at the last minute. Children may have to forgo school and their parents may suffer unplanned loss of wages for the day, or may not be able to appear in the court at all.

Vulnerable witness deposition complex is not used for interactions with children during bail hearings. Children feel uncomfortable and intimidated by the court room environment, which defeats the goals of barrier free environment for vulnerable witnesses and witness protection that has been emphasized by the Supreme Court in Mahender Chawla & Ors. vs. Union of India & Ors. [Writ Petition (Criminal) No. 156 of 2016] and [Smruti Tukaram Badade vs. State of Maharashtra & Anr [Criminal Appeal No 1101 of 2019]. Besides, this can also lead to secondary victimisation.

Child's Right to be Heard during Bail Proceedings - The Law and its Implementation

When right to be heard goes wrong ...

Chandrika (name changed) was summoned to court for the bail hearing. She is a child with learning disability, who's had a hard time understanding the functioning of the court and justice system. The child was waiting outside of the courtroom with Safeena, her support person from HAQ: Centre for Child Rights, who could see fear run through her bones when she suddenly saw the accused walk through the courtroom.

Chandrika was abused by two men. First it was 75 year old Dheeraj (name changed), who lived in her neighbourhood and later his 23 year old relative Anil (name changed). She used to buy milk from Dheeraj's dairy every day and would also come across him when he would come to a shack next to Chandrika's house to buy alcohol. Dheeraj was very friendly with the child and would often give her chocolates to eat. One day, when Chandrika went to his shop to buy milk, Dheeraj sexually assaulted her and the saga continued multiple times thereafter. The family was not aware of these assaults as Dheeraj had threatened to kill Chandrika if she disclosed anything to anybody. Later she was sexually assaulted by Dheeraj's relative Anil, which was discovered by her mother when she went looking for her missing daughter. The child was found in Dheeraj's house, where her mother saw Anil putting on his clothes while Chandrika was lying on the bed without her trousers. Anil ran away on seeing her mother. Her parents informed the police. Chandrika disclosed about the sexual assault she had been subjected to earlier by Dheeraj when her medical examination revealed that she was pregnant. The family could not comprehend why Dheeraj had not been arrested for over a month after all this. They were terrified by the fact that they had to walk past him everyday even after filing a complaint against him. Chandrika had to drop out of school as the family was worried that Dheeraj Singh would cause further harm to her. She had faced constant threats from Dheeraj. Chandrika has been living in pain and distress ever since.

On the day of bail hearing, Chandrika accompanied by the support person from HAQ, was sitting in front of the courtroom waiting to be called out. When both the accused were presented in the court, Chandrika saw them and started shivering. The sight of the accused scared her and her eyes were teary. The support person took her to the Ahlmad's room and tried to calm her down. The experience was devastating and it took a while before Chandrika could muster courage to go inside the courtroom.

Towards course correction ...

Babulal vs. State [CRL.A. 198/2020], Delhi High Court, Judgement dt. 11.01.2023

Court Directions -

- Timely service of notice of bail application on the victim/prosecutrix by the IO
- Victim can be produced virtually



- If the victim authorizes her counsel/parent/guardian/support person to appear on her behalf and make submissions on the bail application, insistence on victim's physical or virtual presence shouldn't be made

Child's Testimony

This section highlights data indicating how long the process of recording the child's testimony takes.

Table 24:
STATUS OF CHILD'S TESTIMONY IN 511 CASES – AT A GLANCE

| Status | No. of Cases | Percentage |
|---|--------------|-------------|
| No. of cases where child's testimony has been completed | 326 | 64% |
| No. of cases where the child's testimony is partially recorded | 7 | 1% |
| No. of cases listed for child's testimony but it is yet to commence | 95 | 19% |
| No. of cases that have proceeded or have been concluded without child's testimony | 36 | 7% |
| No. of cases yet to reach the stage of child's testimony | 47 | 9% |
| Total No. of cases | 511 | 100% |

- In cases where the child's testimony was recorded, 184 are those where this was done within a single hearing
- A bulk of cases took 2-6 hearings, whereas 11 cases took between 10-20 hearings

Table 26:
TIME TAKEN FOR COMPLETION OF CHILD'S TESTIMONY FROM DATE OF COMMENCEMENT TO END DATE

| Time Period | No. of Cases | Percentage |
|-----------------|--------------|-------------|
| Within 1 Month | 239 | 73% |
| 1 to 3 Months | 34 | 10% |
| 3 to 6 Months | 20 | 6% |
| 6 to 9 Months | 12 | 4% |
| 9 to 12 Months | 3 | 1% |
| 12 to 15 Months | 5 | 2% |
| 15 to 18 Months | 3 | 1% |
| 18 to 21 Months | 2 | 1% |
| 21 to 27 Months | 2 | 1% |
| 27 to 30 Months | 3 | 1% |
| Above 30 Months | 3 | 1% |
| Total | 326 | 100% |

- In 20% cases, the child's testimony is yet to be completed
- 9% of the cases (47) are yet to reach that stage. There is a marked improvement since HAQ's last Factsheet produced in 2021, when 30% cases were yet to reach the stage of child's testimony.
- In 7% cases (36), the proceedings were completed without the child's testimony

Table 25:
NO. OF HEARINGS FOR CHILD'S TESTIMONY FROM DATE OF COMMENCEMENT TO END DATE

| Period | No. of Cases | Percentage |
|----------------|--------------|-------------|
| Single Hearing | 184 | 56% |
| 2 Hearings | 63 | 19% |
| 3 Hearings | 28 | 9% |
| 4-6 Hearings | 28 | 9% |
| 7-10 Hearings | 8 | 2% |
| 10-20 Hearings | 11 | 3% |
| >20 Hearings | 4 | 1% |
| Total | 326 | 100% |

- 73% of the child testimonies were concluded within 1 month of commencement of the process
- Of all 326 cases where the child's testimony is recorded, 94% of the testimonies were concluded in less than 9 months from the date of commencement of the process

Child's Testimony

Table 27:
**TIME TAKEN FROM COGNIZANCE TO
COMPLETION OF CHILD'S TESTIMONY**

| <i>Time Period</i> | <i>No. of Cases</i> | <i>Percentage</i> |
|--------------------|---------------------|-------------------|
| Within 1 Month | 5 | 2% |
| 1 to 3 Months | 12 | 4% |
| 3 to 6 Months | 66 | 20% |
| 6 to 9 Months | 56 | 17% |
| 9 to 12 Months | 47 | 14% |
| 12 to 15 Months | 28 | 9% |
| 15 to 18 Months | 21 | 6% |
| 18 to 21 Months | 29 | 9% |
| 21 to 27 Months | 29 | 9% |
| 27 to 30 Months | 8 | 2% |
| Above 30 Months | 25 | 8% |
| Total | 326 | 100% |

Table 28:
REASONS FOR NOT RECORDING CHILD'S TESTIMONY

| <i>Reasons</i> | <i>No. of Cases</i> |
|--|---------------------|
| Child not a competent witness | 12 |
| Child passed away | 5 |
| Accused passed away and matter was abated | 7 |
| Case discharged as no offence was made out under the POCSO Act | 2 |
| Child not traceable | 1 |
| Accused pleaded guilty | 3 |
| PO Consigned | 4 |
| Police Filed Closure Report | 2 |
| Total | 36 |

- 43% cases complete the stages between cognizance to completion of child's testimony in 9 months
- 34% have taken above 15 months

- In 12 cases, the child has been indicated as 'not' being a competent witness
- In 5 cases, the child passed away

- The average time taken for completion of testimony from start to end date is 62 days (2.1 months); the maximum time taken goes up to 1275 days (42.5 months / 3.5 years). Minimum time is 1 day.
- The average time taken from date of cognizance to completion of testimony is 404 days (13.5 months); the maximum time taken goes up to 1690 days (56.3 months / 4.6 years). Minimum time is 6 days.
- **Time taken for recording child's testimony has increased since 2021 despite creation of more Special Courts. This is because creation of more courts is not matched with creation of more vulnerable witness deposition rooms to record child's testimony.**

Adjournments

Reasons and details of adjournments are spelt out in this factsheet.

Table 29:
DETAILS OF ADJOURNMENT

| Stage as per Criminal Justice Procedure | Total Hearings | Effective | Adjournment | Effective: Adjournment Ratio | |
|---|----------------|-------------|-------------|------------------------------|-------------|
| | | | | Effective | Adjournment |
| Cognizance | 692 | 558 | 134 | 81 | 19 |
| Preliminary Assessment (JJB) | 54 | 24 | 30 | 44 | 56 |
| Age Enquiry (JJB) | 86 | 38 | 48 | 44 | 56 |
| Framing of Charges | 3134 | 1549 | 1585 | 49 | 51 |
| PE(VT) | 1121 | 660 | 461 | 59 | 41 |
| PE(Post VT) | 6879 | 2670 | 4209 | 39 | 61 |
| Statement of Accused | 426 | 170 | 256 | 40 | 60 |
| Defence Evidence | 216 | 89 | 127 | 41 | 59 |
| Final Argument | 748 | 298 | 450 | 40 | 60 |
| Final Order/Judgement | 310 | 123 | 187 | 40 | 60 |
| Argument/order on sentencing | 192 | 87 | 105 | 45 | 55 |
| Total | 13858 | 6266 | 7592 | 45 | 55 |

- 1: 61% cases at the stage of prosecution evidence other than evidence of the child end up in adjournments. This is the stage when other witnesses such as doctors, police officers, school authorities, witnesses having first hand account of the incident are required to give evidence. While some such witnesses can be dropped, some are critical, holding offices of importance and therefore seldom find time to give to court cases.
- 2: The rate of adjournments tip to the higher side with proceedings involving the defence. While steps prior to that are effective, multiple adjournments owed to delays in statement from the accused and defence evidence would delay the process. It is important to note that post this, final argument and final order stages are quite ineffective with 60% dates ending in further adjournments

Table 30 indicates reasons for adjournment (key data points indicated in dark pink)

- In over 564 hearings, the accused was either not present or not produced
- In 772 hearings, the defence counsel was not available or sought adjournment
- 558 hearings were adjourned due court's paucity of time
- 749 adjournments were owed to the absence of the Prosecution Witness (PW)
- COVID restrictions impacted 25% of the hearings, rendering them ineffective

Adjournments

Table 30:
REASONS FOR ADJOURNMENT

| <i>Reasons</i> | <i>No. of hearings</i> | <i>Percentage</i> |
|---|------------------------|-------------------|
| Accused has no legal representation | 46 | 0.6% |
| Accused was absent | 270 | 3.6% |
| Accused could not be produced due to shortage of police personnel | 56 | 0.7% |
| Accused was not produced | 238 | 3.1% |
| Case property was not produced | 8 | 0.1% |
| Documents not complete | 38 | 0.5% |
| Report was not filed by IO/SHO | 65 | 0.9% |
| Report was not received from Commissioner of Police | 1 | 0.0% |
| Report was not received from jail | 1 | 0.0% |
| FSL report not received | 132 | 1.7% |
| No Report received from DLSA | 31 | 0.4% |
| Victim Assessment report not received | 12 | 0.2% |
| No PW was summoned | 163 | 2.1% |
| Summon issued to wrong witness | 11 | 0.1% |
| Summon received back unserved | 3 | 0.0% |
| Summon served at wrong address | 1 | 0.0% |
| Summon was not served | 90 | 1.2% |
| Copy of order has not been sent to the Secretary, DLSA to appoint counsel for accused | 1 | 0.0% |
| IO sought Adjournment | 81 | 1.1% |
| IO was absent | 229 | 3.0% |
| ACP/DCP was not present | 2 | 0.0% |
| Police officials were busy in election duty | 5 | 0.1% |
| APP sought an adjournment | 62 | 0.8% |
| APP was not prepared | 1 | 0.0% |
| APP was not present | 52 | 0.7% |
| APP was on leave | 131 | 1.7% |
| Both defence counsel and APP not present | 6 | 0.1% |
| Both defence counsel and APP seek adjournment jointly | 17 | 0.2% |
| Defence could not bring sureties | 8 | 0.0% |
| Defence counsel has not filed Vakalatnama | 5 | 0.1% |
| Defence Counsel has just filed the Vakalatnama and needs time to prepare | 1 | 0.0% |
| Defence counsel sought adjournment | 421 | 5.5% |
| Defence counsel was not present | 351 | 4.6% |
| Defence Evidence/Witnesses not present | 15 | 0.2% |

Adjournments

Table 30 continues

REASONS FOR ADJOURNMENT

| <i>Reasons</i> | <i>No. of hearings</i> | <i>Percentage</i> |
|--|------------------------|-------------------|
| Complainant's lawyer sought adjournment | 1 | 0.0% |
| PW was not in the position to depose | 33 | 0.4% |
| PW was not present | 749 | 9.9% |
| Expert was not present | 4 | 0.1% |
| Support person not present | 1 | 0.0% |
| Victim was absent | 64 | 0.8% |
| Victim was not in position to depose | 38 | 0.5% |
| Victim was unwell | 5 | 0.1% |
| No witnesses left for testimony | 1 | 0.0% |
| PE not completed in connected matter | 14 | 0.2% |
| All Material Witnesses in connected cases could not be examined the same day | 15 | 0.2% |
| Lawyer's Strike | 127 | 1.7% |
| Case transferred to another court | 25 | 0.3% |
| Awaiting the HC decision on amendment of charges | 1 | 0.0% |
| Trial has been Stayed by High Court | 3 | 0.0% |
| As per the directions of the Supreme Court, matters older than 5 years are being heard on priority basis | 5 | 0.1% |
| Court Computer not working | 1 | 0.0% |
| Court had paucity of time | 558 | 7.3% |
| Audio Video system of the court was not working | 2 | 0.0% |
| Court Holiday | 25 | 0.3% |
| Elections in Court | 3 | 0.0% |
| Matter was listed on a VC date (when proceedings are to take place through video conferencing instead of a physical hearing) | 171 | 2.3% |
| Stenographer was busy | 1 | 0.0% |
| Stenographer was on leave | 25 | 0.3% |
| Translator was not available | 2 | 0.0% |
| Interpreter was not present | 6 | 0.1% |
| Witness could not be examined due to absence of Special Educator | 1 | 0.0% |
| Vulnerable Witness Deposition Room (VWDR) was occupied by another court | 12 | 0.2% |
| Vakalatnama got misplaced from judicial file | 1 | 0.0% |
| Judge preferred to frame charges on a physical hearing date | 6 | 0.1% |
| Judge did not go through the file | 1 | 0.0% |

Adjournments

Table 30 continues

REASONS FOR ADJOURNMENT

| <i>Reasons</i> | <i>No. of hearings</i> | <i>Percentage</i> |
|--|------------------------|-------------------|
| Judge did not have the file | 4 | 0.1% |
| Judge gone for meeting | 14 | 0.2% |
| Judge gone for training | 111 | 1.5% |
| Judge on leave | 1078 | 14.2% |
| No Judge appointed as yet | 61 | 0.8% |
| Proceedings not held due to Covid-19 | 252 | 3.3% |
| Evidence not being conducted due to COVID restrictions | 560 | 7.4% |
| Link was not working | 4 | 0.1% |
| Internet connectivity issue at the reader / steno and judge's end | 6 | 0.1% |
| Child's lawyer could not enter the VC hearing | 1 | 0.0% |
| Nationwide lockdown announced by Central government due to COVID-19 outbreak | 604 | 8.0% |
| Cases adjourned en bloc | 436 | 5.7% |
| PA report not submitted | 4 | 0.1% |
| Report of psychologist not submitted to the court | 2 | 0.0% |
| Total Hearings Adjourned | 7592 | 100.0% |



Challenges relating to FSL Reports

This factsheet records the delay in FSL examination and submission of FSL reports in the court. It also delves into cases that explain the kind of challenges faced with respect to FSL examination and its impact on the cases.

Table 31:
STATUS OF FSL SAMPLE COLLECTION

| Status | No. of Cases |
|-------------------------|--------------|
| Sample(s) collected | 258 |
| Sample(s) not collected | 253 |
| Total | 511 |

Table 32:
PROGRESS IN 258 CASES WHERE FSL SAMPLES ARE COLLECTED

| Progress | No. of Cases |
|--|--------------|
| FSL Sample(s) submitted for testing | 258 |
| FSL Examination conducted and report prepared | 194 |
| FSL Examination report submitted in court | 194 |
| Abatement before FSL report could be submitted | 2 |
| FSL Examination Result Awaited | 62 |

“The Commission identified that given that forensic reports are a very critical and a time-sensitive part of any POCSO investigation, any delay in this part of the investigation significantly postpones the process of filing a chargesheet, thereby delaying justice to children who have faced this intense trauma.

... In its quest to ensure the investigations in POCSO cases are completed within the stipulated time, the Commission sought quarterly reports from the Forensic Science Laboratory (FSL), Government of Delhi to monitor if the forensic examinations are completed on time.

On examining, the Commission observed that while almost 50% of these cases’ investigation was completed within 3 months time, the delay occurred on part of the police in collecting these reports and filing chargesheets.”

- <https://dcpcr.delhi.gov.in/interventions-undertaken-pocso-division-recently>

Analysis of court orders and FSL reports in 511 cases shows:

- On an average, **493 days** are taken from the date of collection of sample for FSL examination to its submission in court
- Average time taken by the police from sample collection to depositing it with the FSL Laboratory for testing is **29 days**
- Average time taken by the FSL Laboratory from date of receipt of sample to date of preparation of FSL report is **306 days**
- Average time taken by police from date of preparation of FSL report to date of filing the report in court is **158 days**
- In 62 cases where FSL result is awaited, average waiting time has been **868 days**

Challenges relating to FSL Reports: Stories of Despair

Lapses in Police Investigation and FSL Examination

CASUAL APPROACH TO INVESTIGATION & FORENSIC EXAMINATION LEAD TO COLLATERAL DAMAGE - I

CASE STUDIES SHARED BY ADVOCATE ARVIND KUMAR, PANEL LAWYER, HAQ: CENTRE FOR CHILD RIGHTS

FACTS: Medical examination of 15 year old Chandrika revealed that she was carrying 6 weeks' pregnancy. She had been subjected to penetrative sexual assault multiple times by her 70 year old neighbour for about two months and later by the same neighbour's 23 year old relative. The child was produced before the CWC and the CWC directed the IO as well as the hospital to admit the child, conduct the MTP, preserve the sample and send it for FSL examination. The MTP procedure was performed but the sample could not be preserved. The doctors gave a report that the child expelled the foetus material in the washroom and is not cooperating. Investigation was completed and a charge sheet was filed with the same findings.

FIRST INTERVENTION MADE BY THE CHILD'S COUNSEL: After going through the charge sheet, HAQ's panel lawyer representing the child became aware of the lapses on the part of the IO as well as the concerned doctors and moved an application before the court for appropriate orders, seeking answers to - (i) **how was the foetus expelled without the knowledge of the doctors;** (ii) **whether the child was made aware that the foetus material may get expelled while using the washroom and what precautions she should take to prevent the same;** (iii) **what actions have been taken by the doctors or the IO with respect to child's non-cooperation - whether the CWC was informed about it or the child was provided any counselling for the same;** (iv) **what happened to the remaining foetus material (remnants) which came in the ultrasound post expulsion?**

COURT ACTION & POLICE RESPONSE: Taking note of the questions raised by the child's lawyer, the court directed the IO and SHO concerned to file a report in this regard. However, no report was sought from the hospital. On the next court date, the IO and SHO filed a report with certain documents, which were a mere repetition of the earlier story, without answering any of the questions raised by the child's counsel. The report attributed all the blame to the non-cooperative behaviour of the child, and to prove this claim, copies of certain notices were filed showing that the child and her father refused to come to the hospital for further investigation regarding remnants of the foetus material.

SECOND INTERVENTION MADE BY THE CHILD'S COUNSEL: The child's counsel raised objections stating that the said notices were got signed by the child's father, were dated two days prior to the date of hearing and were forged, and that the report filed by the police did not answer the queries raised in the counsel's application. However, the court seemed satisfied and orally suggested the child's counsel to go through the report and raise objections on next date of hearing.

Challenges relating to FSL Reports: Stories of Despair

Lapses in Police Investigation and FSL Examination

SECOND INTERVENTION MADE BY THE CHILD'S COUNSEL (CONTINUES): After going through the report and charge sheet, the counsel found that the alleged notices were dated prior to the date of filing of charge sheet, but had not been made part of the charge sheet, nor was there any mention of the same in the charge sheet. By then, the Judge had been transferred and a new Judge presided over the court. The counsel again tried his luck and filed a similar application, stating that the notices are forged and the police report was evasive.

COURT ACTION: IOs of both the cases were present in the court and the court asked them to respond to the counsel's objections. In their response, the IOs confirmed the fact that the notices are forged and prepared later on to put the blame of non-cooperation on the child. The same was recorded in the court's order. The DCP concerned was directed to take appropriate action. The IOs orally submitted in their defence that they had been recently appointed and had no earlier experience of investigation (which was not recorded in the court order). The CMO of concerned hospital was directed to file a report and give an opinion as to whether the remnants of the foetus material could still be extracted.

RESPONSE FROM THE CMO & THE DCP: The CMO formed a committee to look into the issue and the outcome of the said committee was filed in court, approving the action of the hospital and giving an opinion that the foetus material could no longer be extracted, conveniently avoiding all the important questions. The DCP had issued only a show cause notice to the IOs and further defended police action.

CASUAL APPROACH TO INVESTIGATION & FORENSIC EXAMINATION LEAD TO COLLATERAL DAMAGE - II

FACTS: 15 year old girl Varsha (name changed) was subjected to aggravated penetrative sexual assault by a relative, who had come to visit her family. The child was extremely vulnerable as she had lost her mother a few months earlier. She did not disclose the fact of sexual abuse to anyone, which was revealed after about four months, when she complained of stomach ache and visited the hospital only to find that she was pregnant. The matter was reported to the police the same day. An MTP was conducted and foetus material preserved and handed over to the IO. The IO kept the same in the police *malkhana* and deposited it in the FSL around three months thereafter. The FSL report was inconclusive as the DNA could not be extracted due to degradation of sample.

INTERVENTION MADE BY THE CHILD'S COUNSEL: After going through the FSL Report, the counsel tried to move an application, but the court refused to take the application on record. The court however, agreed to take some action on the issues raised in the application. The counsel informed that the foetus material needs to be kept under 20 degree temperature as per available studies, which was not done in this case.

Challenges relating to FSL Reports: Stories of Despair

Lapses in Police Investigation and FSL Examination

CASUAL APPROACH TO INVESTIGATION & FORENSIC EXAMINATION LEAD TO COLLATERAL DAMAGE - II (Continues)

COURT ACTION & POLICE RESPONSE: On question the IO, she informed the court that the FSL asks for the sample of the victim and accused at the same time, and does not accept a single sample. In this case, since the accused was arrested after around 50 days, the victim's sample could not be deposited immediately. The court then sought clarification from the DCP concerned in view of the judgement in *Alakh Alok Srivastava vs. Union of India 2018(17) SCC 29*, where the Supreme Court has directed constitution of Special Task Force by an officer of the rank of DGP to ensure that the investigation is properly conducted and victims are produced in courts on the dates fixed. The DCP's response was evasive stating that several officers have been found at fault and disciplinary actions are proposed against them and that due to the pandemic, necessary supervisory note could not be issued in this case.

At the instance of the counsel for the child, the court also asked the FSL expert whether it is necessary to submit the sample of the victim and accused at the same time in the FSL, to which the FSL witness answered in the negative, saying that there is no such rule or practice. The FSL expert further informed the court that the detailed guidelines of handling, sealing and preserving the samples have been circulated by the FSL.

The court issued certain suggestions to the police further and the matter was closed with the observation that the effect of the FSL report would be considered at the time of final outcome of the case. On the request of the child's counsel, the court sent the sample of the victim to CFSL for further examination. Meanwhile the accused was released on bail.

CONCLUDING REMARKS: In both cases, after all the efforts and all the directions/clarifications sought by the court, no significant result could be achieved. These cases highlight the casual, insensitive and irresponsible approach of the police and doctors in cases of sexual violence. This could be damaging for the victim as well and the accused alike because the investigation creates confusion instead of aiding in extracting the truth.



Challenges relating to FSL Reports: Stories of Despair

Lapses in Police Investigation and FSL Examination

DIGITAL EVIDENCE LOST TO ILL-EQUIPPED FORENSIC LABS

CASE STUDY SHARED BY ADVOCATE ZISHAAN ISKANDRI, PANEL LAWYER, HAQ: CENTRE FOR CHILD RIGHTS

FACTS: A 14 year old girl whose mother had expired and was living with her father, was allured by a 29 year old uncle of her tuition classmate into friendship. The uncle started talking with her on phone and used to send messages. The accused groomed her into a sexual relationship posing as her source of strength. He also captured some nude photographs of the girl on his mobile phone, which were later used to threaten her into sexual acts. She remained traumatised and depressed. The abuse continued for over six months before she narrated her ordeal to her sister. The accused was arrested and his mobile phone was seized. The charge sheet was filed and trial commenced.

DURING TRIAL: A supplementary charge sheet qua the report on the mobile phone was filed by the police stating that since the mobile phone was locked with a password and the accused refused to share the password, it could not be checked. The CFSL returned the phone with a report that the mobile phone could not be opened because they do not have the password.

CONCLUDING REMARKS: The Forensic Sciences Laboratory dealing with electronic evidences are still outdated and ill-equipped while the same phones can be unlocked by private vendors even when they do not have a password. There is a dire need for a court order directing the government to update their forensic evidence extraction systems.



Disposal

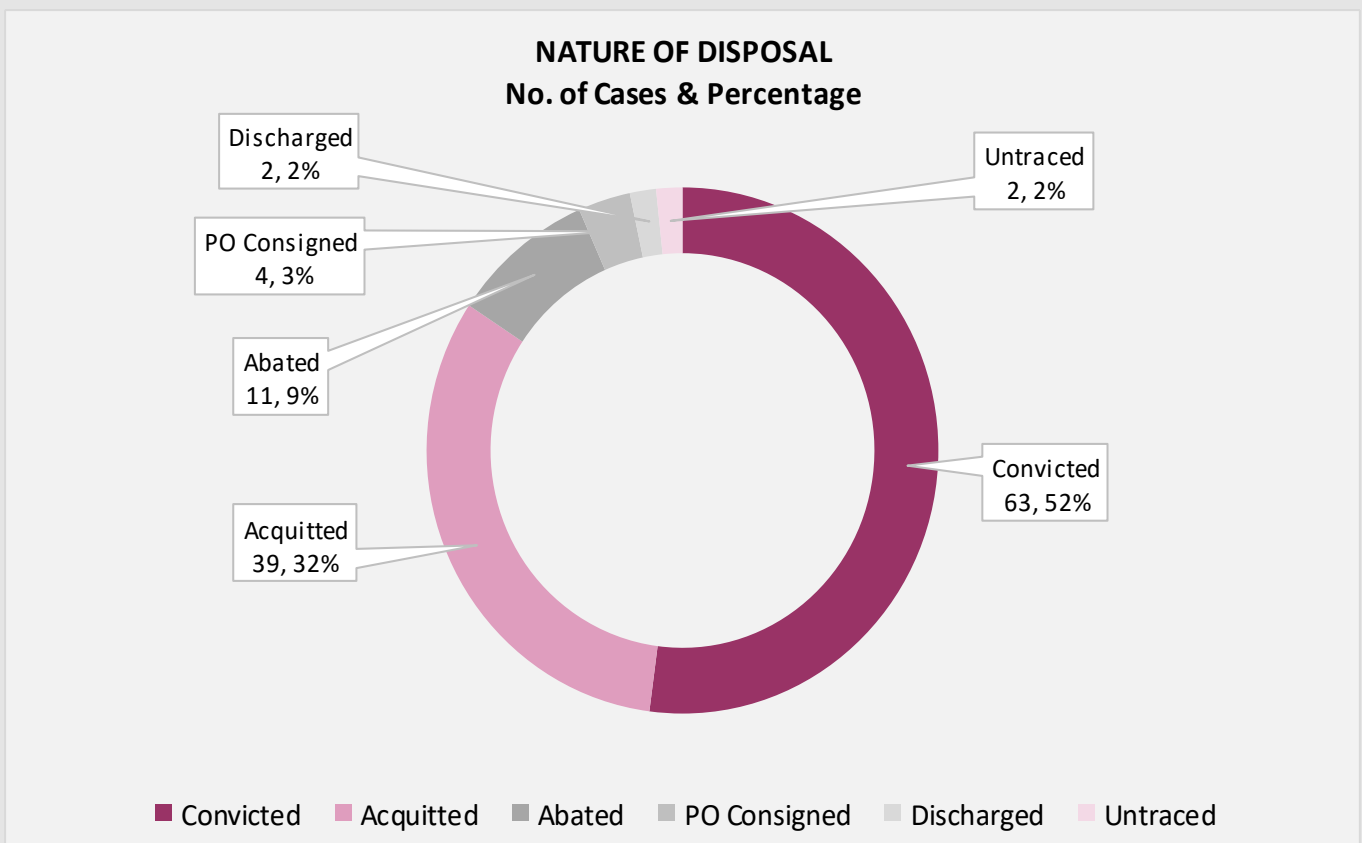
This factsheet highlights the time taken & nature of disposal of the cases. It also details the reasons for acquittal in each of the cases and gives an overall picture of how long the system takes to bring cases to this stage.

Table 33:
NATURE OF DISPOSAL

| <i>Status of Disposed Cases</i> | <i>No. of Cases</i> |
|--------------------------------------|---------------------|
| Convicted | 63 |
| Acquitted | 39 |
| Abated | 11 |
| PO Consigned | 4 |
| Discharged | 2 |
| Police Filed Untraced Report Closure | 2 |
| Total | 121 |

Conviction Rate: 52%

Acquittal Rate: 32%



Disposal

Table 34:
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|---|-------------------------|---------------------------|---|
| 1. There was delay in FIR. 2. Victim refused for her internal medical examination. 3. Nothing incriminating against the accused found in the FSL report. 4. Victim in her deposition before Court stated that the Accused did not commit any wrong act with her and that she implicated the accused at the instance of her mother. 5. Material inconsistencies observed by Hon'ble Court in the testimonies of the Victim and her family members. | 12 | 23 | Neighbour |
| 1. Delay in FIR. 2. Inconsistency in Statement of Prosecution Witnesses. 3. False Implication by the Victim at behest of her mother. | 12 | 42 | Father |
| The version of the Prosecutrix does not inspire confidence and there is apparent conflict in her versions given till 24.12.2014 and subsequently after 31.12.2014 and the said contradictions are material in nature. | 14 | 22 | Paternal Aunt's Daughter's Son |
| 1. The victim did not disclose the incidents to anyone, however as per statement on the contrary to that she had chances/opportunity to disclose. 2. The statement of the victim and the school teacher regarding the date of the incident does not corroborate. Material contradiction as regards the genesis of the FIR. 3. The veracity of the victim has been controverted on material aspects. 4. Due to lack of witness, the testimony of the lone child victim cannot be the sole basis of the conviction without corroboration. 5. The prosecution was unable to prove the criminality beyond reasonable doubts. And the Defence has been able to rebut the presumption under section 29 of the POCSO Act and stood the test of preponderance of probabilities. 6. The child was caught with a boy to which the victim and the accused agrees which led the victim to be upset. The victim could have had motive to falsely implicate the accused. She had admitted that she was angry with him because he used to scold her and not approve of her friendship with boys. 7. There was no material to show how she continued to be a student of class - V to come in contact with the teacher who set the law in motion. 8. The victim's name had been struck off from the school in 2013. The victim had shifted to a different school with her <i>maasi</i> in 2015, 26 October, where she was a student of class-VI. The discrepancy in the dates when the matter was first reported to Teacher and what transpired thereafter till recording of complaint before CWC, is not explained by the prosecution. | 12 | 85 | Employer |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|--|-------------------------|---------------------------|---|
| <p>1. The letters written by the victim, the messages sent by the victim and the photographs of the victim with the accused falsify her version. Considering the entire material on record, PW1 (the victim) cannot be classified as a sterling witness.</p> <p>2. There is no specific forensic/DNA evidence which connects the accused with the alleged rape.</p> <p>3. There is no other corroborative evidence or independent witness.</p> <p>4. The delay in making the complaint to the police with respect to the alleged incident of rape is also fatal to the case.</p> <p>5. Allegations that the accused had kidnapped the victim and had taken her to Manali, Himachal Pradesh and to a village in Haryana is considered, there is neither any proper investigation in this respect nor any supporting evidence. The defence of the accused appears to be probable.</p> <p>6. The prosecution has failed to bring home the charges against the accused for the alleged offences punishable under sections 363/376/354D/506 of IPC and section 4 read with section 3, and section 12 read with section 11 of the POCSO Act, 2012 as the accused is found to be entitled to the benefit of reasonable doubt.</p> | 16 | 23 | Acquaintance |
| <p>1. Material witnesses turned hostile.</p> <p>2. Discrepancy in victim testimony regarding identification of clothes.</p> <p>3. Discrepancy in timing of incidents.</p> | 15 | 32 | Friend |
| <p>1. The victim and her father's and mother's statements about the identification of the accused are different.</p> <p>2. There is a delay in registering the FIR and the delay is not explained.</p> <p>3. The victim at the time of her medical examination had refused for her internal medical examination and the victim had not levelled any allegation of physical assault at the time of medical examination.</p> <p>4. Clothes of the victim and the accused were not taken into possession.</p> <p>5. The van/car which the victim alleges to be kidnapped in is not traced nor the driver of the vehicle was traced. There was no clue for both of them.</p> <p>6. Variation in the victim's statement before the parents at Police Station and the statement recorded under u/s 164 of Cr.P.C.</p> <p>7. Lack of witness, Police has not examined any witness who would have corroborated the kidnapping incident.</p> <p>8. Variation in the statement of father of the victim and arrest memo regarding the arrest of the accused.</p> <p>9. Lack of sterling witness.</p> | 15 | 28 | Neighbour |
| <p>1. No specific allegation made by the victim or any other prosecution witnesses.</p> <p>2. Allegation were vague and date, time and place were not specified.</p> <p>3. Prosecution could not prove the case beyond reasonable doubt.</p> | 14 | 21 | Neighbour |
| <p>1. Inconsistency in the testimony statement of child victim.</p> <p>2. Material contradiction in statement given by key witnesses.</p> | 10 | 56 | Neighbour |
| <p>1. Improbability in commission of offence in the given circumstances.</p> <p>2. Scientific evidence do not corroborate allegation.</p> | 15 | 18 | Friend |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| Reasons | Age of the Child | Age of the Accused | Relationship between Child & Accused |
|---|-------------------------|---------------------------|---|
| 1. Delay of two days in reporting the case had not been explained. 2. The cousin of the child victim who was eyewitness to the incident had not supported the case and turned hostile. 3. There were certain contradictions and improvements in the statements of child victim before the police, in section 164 statement and before the trial. 4. The MLC and the FSL report did not support the version of child victim. | 15 | 43 | Adoptive Father |
| 1. There were many contradictions and improvements in the statement of child victim and her grandmother who was the eyewitness to the incident in their statements recorded before the police, before learned MM and before the trial court. 2. The child victim failed to identify the accused during trial in the court, she identified accused after leading by APP. 3. The MLC and the FSL report did not support the version of prosecution. 4. The accused has successfully proved his defence through defence witnesses. | 6 | 32 | Neighbour |
| The court disbelieved the child victim's version as allegation of the child contradicted by the MLC and further DNA of the foetus did not match. | 15 | 30 | Maternal Uncle |
| The court discarded the statement of child victim as the same was not credible and reliable. | 14 | 29 | Brother |
| The accused was acquitted on following grounds mainly: 1. The child disclosed the incident on next day of the incident, hence the court doubted his version. 2. As per child version, the accused had inserted a stick (<i>danda</i>) in his anus, but the police had failed to recover the said <i>danda</i> . 3. The police had not investigated the case properly hence there were many lacunas in the prosecution story. | 5 | 28 | Helper in School |
| At the time of testimony of the child victim, she did not appear in the court and the court was informed about the disappearance of the victim and her family. The court issued many directions to all concerned police officials to find them out, but the police failed. After waiting for 2 years and more than 15 court hearings, the court closed the evidence and acquitted the accused. | 7 | 25 | Step Father |
| Prosecution could not prove its case and accused persons got acquitted due to following reasons: 1. There was no allegation of penetrative sexual assault on 28.06.2016 in the first complaint which was added by the prosecutrix in her statement under 164 Cr.P.C. 2. Complaint is highly belated and it was observed that victim was not consistent on date and time of first assault. 3. Defence through statement under section 313 Cr.P.C and through cross-examination of PW-1 (Prosecutrix) duly established that there were multiple reason for his false implication. 4. MLC and FSL report were not in corroboration with prosecution version. | 17 | 42 | Biological Father |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|--|-------------------------|---------------------------|---|
| Child turned hostile during her testimony. There was no other incriminating evidence against the accused except the testimony of child victim, who had not supported her allegation at all. Hence the accused was acquitted and the case was disposed at stage of PE(VT). | 15 | 26 | Cousin |
| <ol style="list-style-type: none"> 1. The version of the child victim has not been corroborated by the MLC and FSL report. 2. The mother of child victim refused for internal examination of the child on the ground that no sexual offence was committed with the child. 3. Prosecution failed to prove the case beyond reasonable doubt and hence benefit of doubt is given to the accused. | 3 | 40 | Play School Owner's Husband |
| <ol style="list-style-type: none"> 1. Uncorroborated testimony of victim who has improved her case does not inspire confidence and cannot be reliable and trustworthy and so is not sufficient to believe that the accused committed penetrative sexual assault. 2. Considering the testimonies of prosecution witnesses having inconsistencies and contradictions which go to the root of matter it can be said that the accused is able to discharge his onus and have raised a doubt on the case of prosecution. 3. The inconsistencies and contradictions raised doubt that no such offence has occurred as deposed by the witnesses. | 7 | 21 | Neighbour |
| The JCL, got acquitted in this case. The Ld. P.M. mentioned in the order that there was no case made out against the juvenile. | 7 | 16 | Neighbour |
| <ol style="list-style-type: none"> 1. There are material contradictions in the oral evidence of the witnesses of prosecution. 2. Previous animosity between the family of prosecutrix and JCL. 3. No medical history of injuries despite the allegations of digital penetration. 4. On account of refusal of mother of prosecutrix, medical samples were not taken. And as such, there is no forensic evidence whatsoever which could possibly connect JCL with the alleged offence. 5. Juvenile stands acquitted of the offences punishable under section 6, POCSO Act. | 5 | 17 | Neighbour |
| There is inexplicable silence of the victim on all 5 occasions when sexual assault was committed upon her, there are discrepancies in the statements of victim and her mother, evidence of the prosecutrix is not of sterling quality, there is no evidence on record to corroborate prosecutrix's deposition, the incidents as narrated by the prosecutrix appear doubtful, hence juvenile is acquitted of the offence's punishable u/s 376/506 IPC and Section 4 POCSO Act. | 16 | 17 | Neighbour |
| The child victim was unable to recall the incident and did not depose anything against the accused. The child victim was also unable to recognize the accused and to identify the accused. Neither MLC nor the FSL report support the allegation against the accused. The accused acquitted u/s 377 IPC. | 3 | 43 | School Cab Driver |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|---|-------------------------|---------------------------|---|
| <p>The version of prosecutrix was not relied upon by the court on the ground that:</p> <ol style="list-style-type: none"> the circumstances and sequence of the alleged incident were very unnatural; the testimony of the child victim, her mother and two of her relatives contradicts the version of each other; the conduct of child victim, her mother and two relatives after the incident are not natural; neither the forensic evidence nor the MLC support the allegation of child victim. <p>Accused acquitted from offence u/s 376, 506 IPC and 4 POCSO Act.</p> | 13 | 17 | Neighbour |
| <p>The allegation against JCL was entirely vague as regards the date and time. There was delay of five-months in registration of FIR. The FSL report does not connect the JCL with the alleged offence. There was also no blood or semen found on any of the exhibits. The version of the child victim was contradicted by her grandmother during the testimony before the court. The court observed that the version of victim boy is not of sterling quality and there was no corroboration whatsoever from any quarter. On the contrary, circumstances on record create a big doubt in the prosecution version. The accused acquitted from the offence u/s 6 of POCSO Act.</p> | 12 | 16 | Neighbour |
| <p>The Magistrate said that there was no direct evidence against both juveniles. He insinuated that the child victim was either confused or was lying. He further stated that he finds it hard to understand why the child victim hadn't testified against these two juveniles earlier.</p> | 14 | 17 | Senior Student |
| <ol style="list-style-type: none"> Victim was not consistent with name and role of each accused. (4 accused) Victim was not consistent with the time and circumstances of the incident. Victim was declared an adult on the basis of age assessment report as it was border line case. The POCSO charges were removed. The court declared the victim as unreliable and gave benefit of doubt to the accused. There was unexplained delay of 3 months in reporting the matter. | 16 | 46 | Employer and his friends |
| <ol style="list-style-type: none"> The victim had disclosed to the Ld. Magistrate that the incident occurred a few days before making the complaint. However according to the complainant, the incident had occurred about 8 months ago from the date of making the complaint. During cross examination, the victim, at the first instance deposed that her mother (complainant) had told her what was to be said in the Court but immediately thereafter retracted the said statement. PW2 deposed that one of the sexual assault incidents (licking of penis) occurred at night in her presence, however PW1 deposed that it occurred during the day time when her mother (PW2) had gone to work. Complainant failed to disclose the dates of her absence (as she had alleged that the acts were committed by the accused against PW1 whenever she used to be out for medical check-up). Complainant and the accused did not share a healthy relationship. | 6 | 23 | Step Father |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|--|-------------------------|---------------------------|---|
| <ol style="list-style-type: none"> 1. Prosecution has failed to establish the foundational facts to prove the charges against the accused. 2. Prosecution could not prove that the accused was either the creator of this obscene video or that he had published or distributed it to others. 3. Evidence led on record and sequence of the events deposed by the victim and her parents does not inspire confidence. 4. There are no eye witnesses to support the case. 5. Testimony of the victim is marred by her contradictory statements to the police and doctors at different stages of investigation. Sole testimony of the victim is not of “sterling” nature. | 12 | 23 | Neighbour |
| <ol style="list-style-type: none"> 1. IO did not carry out proper investigation. No photographs of the place from where recovery was affected have been brought on record, eye witness appears to be a planted witness, crime team officials were not arrayed as witnesses, site plan of the place of recovery is not prepared. 2. The only eye witness brought on record turned hostile and did not support the prosecution story on material counts. 3. Failure to examine victim on account of her disability proved fatal for the prosecution as the prosecution could not bring on record any other worthy material against the accused. 4. Evidence is not sufficient to hold the accused guilty. Neither there is any eye witness account nor any substantive ocular testimony pointing towards the involvement of the accused in the crime nor is there any forensic evidence connecting the accused with the allegations. 5. Prosecution has failed to discharge its onus. | 11 | 20 | Stranger |
| <ol style="list-style-type: none"> 1. Prosecution has failed to establish the foundational facts of the case by leading evidence, hence presumption under section 29 of the POCSO Act would not operate against the accused in this case. 2. When material on record examined on the touchstone of the principle of proof beyond reasonable doubt, the prosecution has failed to bring home the charges against the accused. 3. The victim cannot be called a ‘sterling witness’. 4. It can be safely held that the testimony of the victim i.e. star witness of the prosecution is absolutely unreliable and unworthy of any credence. 5. Discrepancy in the statement of the prosecutrix and other witnesses. | 16 | 25 | Family Friend |
| <ol style="list-style-type: none"> 1. Contradiction in statement of both prosecutrix. 2. Discrepancy in the statement of the child. 3. Delay in disclosing the event of incident. | 17 | 45 | Step Father |
| <ol style="list-style-type: none"> 1. Contradiction in the statement of both prosecutrix. 2. Discrepancy in the statement of the child. 3. Delay in disclosing the event of incident. | 14 | 45 | Step Father |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|---|-------------------------|---------------------------|---|
| <ol style="list-style-type: none"> 1. Delay in FIR has not been explained by the prosecution. 2. Testimony of material witnesses cannot be said to be sterling quality. 3. If two views are possible, the view favourable to the accused must be accepted. 4. Prosecution failed to prove the case against accused beyond reasonable doubt. | 7 | 60 | Neighbour |
| <ol style="list-style-type: none"> 1. Delay in registration of FIR has not been explained and in the totality of facts and circumstances of the case, the delay, which is more than a year, is detrimental to the case of prosecution. 2. There is enough material on record to show that there was acrimony in family. 3. Father of the child victim or her brother have never been made witnesses. 4. The chances of the victim, who is of innocent age, playing into the hands of her grandparents (who are inimically disposed towards the accused persons) cannot be ruled out. 5. The MLC does not record the symptoms that the victim was reportedly suffering. 6. IO has not identified the place where the sexual assault was committed upon the victim by her maternal uncle. | 6 | 40 & 37 | Maternal Uncle & Mother |
| <ol style="list-style-type: none"> 1. Contradictions in the testimony of the victim and the same is not trustworthy. 2. Improvement in FIR, 164 Cr.PC with respect to penetration. 3. PW6, the key witness for the prosecution, denied all the averments and stated that she neither knows the victim nor was playing with her. 4. Prosecution has not been able to prove that the victim was under the age of 18 years at the time of the alleged incident. 5. Victim failed to identify the clothes which were sent to FSL for examination and categorically stated that the clothes seized by the doctor were not the same as produced in court. 6. FSL result is of no help to the prosecution because it is doubtful whether the clothes which were worn by the victim at the time of alleged incident were sent for examination or not. It is also not clear whether the clothes were seized by the police or by the doctor and whether clothes seized by the doctor were the same as those worn by the victim at the time of incident. 7. The chain of circumstances is doubtful, coupled with other contradictions. 8. If two views are possible, the view favourable to the accused must be accepted. If there is a reasonable doubt with regard to the guilt of the accused, the accused is entitled to benefit of doubt. | 12 | 25 | Neighbour |

Disposal

Table 34 continues
REASONS FOR ACQUITTAL

| <i>Reasons</i> | <i>Age of the Child</i> | <i>Age of the Accused</i> | <i>Relationship between Child & Accused</i> |
|---|-------------------------|---------------------------|---|
| <ol style="list-style-type: none"> 1. Prosecution failed to prove the case beyond reasonable doubt. 2. Victim is not examined as PW (as she was of tender age). 3. The complainant 'T' (mother of victim) turned hostile. 4. Testimony of complainant 'T' is not clear, cogent, credible and trustworthy and same has not been corroborated by any independent eye witness and medical evidence. 5. If two views are possible, the view favourable to the accused must be accepted. | 3 | 25 | Neighbour |
| <ol style="list-style-type: none"> 1. Inconsistencies in the statement of the victim. And Uncorroborated testimony of the victim. 2. There is no evidence to substantiate the prosecution's story that accused is the same person who molested the victim. 3. Investigating Officer failed to carry out investigation on various material aspects. 4. One main witness who could identify the accused could not be traced. 5. Identity of the accused could not be established as per the version of the victim. 6. FSL result could not establish that it was the accused who committed assault. 7. IO did not procure the opinion of the doctor who examined the victim after submission of FSL result and therefore sexual assault as explained by the victim cannot be established on the basis of medical evidence. | 6 | 26 | Neighbour |



Disposal

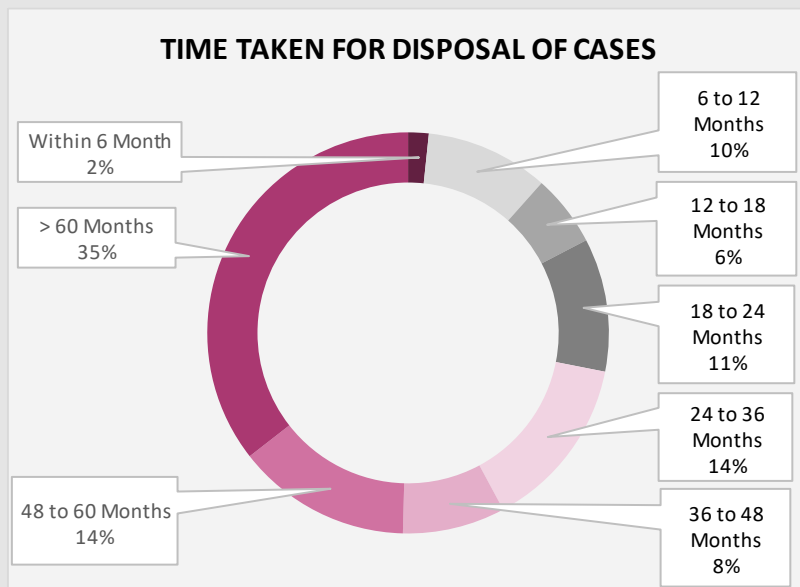


Table 35: TIME TAKEN FOR DISPOSAL OF CASES

| Period | No. of Cases |
|-----------------|--------------|
| Within 6 Month | 2 |
| 6 to 12 Months | 12 |
| 12 to 18 Months | 7 |
| 18 to 24 Months | 13 |
| 24 to 36 Months | 17 |
| 36 to 48 Months | 10 |
| 48 to 60 Months | 17 |
| > 60 Months | 43 |
| Total | 121 |

- Cases that ended in acquittal took nearly 45 months or 4 years to reach that stage
- Cases that ended in conviction took nearly 51 months (or 4 years)
- On an average, the cases took 1352 days (3.7 years) until disposal; cases that took most time reached 2645 days (7.2 years). This indicates the time it takes for the child to receive justice, a closure and an opportunity to feel that he/she is safe

Table 36: AVERAGE, MINIMUM & MAXIMUM TIME TAKEN FOR DISPOSAL (in days)

| | |
|---------------------------------|------|
| Average Time Taken for Disposal | 1352 |
| Minimum Time Taken | 49 |
| Maximum Time Taken | 2645 |

Table 37: AVERAGE, MINIMUM & MAXIMUM TIME TAKEN FOR DISPOSAL in CASES THAT ENDED IN ACQUITTAL

| Acquittal Cases | Days | Months | Years |
|---------------------------------|------|--------|-------|
| Average Time Taken for Disposal | 1346 | 44.87 | 4 |
| Minimum Time Taken | 195 | 6.50 | 1 |
| Maximum Time Taken | 2389 | 79.63 | 7 |

Table 38: AVERAGE, MINIMUM & MAXIMUM TIME TAKEN FOR DISPOSAL in CASES THAT ENDED IN CONVICTION

| Conviction Cases | Days | Months | Years |
|---------------------------------|------|--------|-------|
| Average Time Taken for Disposal | 1525 | 50.84 | 4 |
| Minimum Time Taken | 236 | 7.87 | 1 |
| Maximum Time Taken | 2525 | 84.17 | 7 |

Victim Compensation

This section highlights the time taken for compensation to be granted and documents the reasons for delay. The information is bifurcated to indicate interim compensation and the final compensation.

Table 39:
INTERIM COMPENSATION

| Year of FIR | No. of Cases | Year of Grant | | | | | | | | | | | Total |
|--------------|--------------|---------------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|----------|------------|
| | | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | |
| 2012 | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 |
| 2013 | 15 | 1 | 3 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 9 |
| 2014 | 14 | 0 | 2 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 |
| 2015 | 75 | 0 | 0 | 6 | 6 | 7 | 4 | 0 | 0 | 0 | 1 | 0 | 24 |
| 2016 | 51 | 0 | 0 | 0 | 10 | 6 | 1 | 0 | 1 | 0 | 1 | 1 | 20 |
| 2017 | 40 | 0 | 0 | 0 | 0 | 3 | 5 | 2 | 1 | 0 | 4 | 1 | 16 |
| 2018 | 57 | 0 | 0 | 0 | 0 | 0 | 6 | 21 | 2 | 2 | 1 | 0 | 32 |
| 2019 | 57 | 0 | 0 | 0 | 0 | 0 | 0 | 11 | 12 | 5 | 0 | 0 | 28 |
| 2020 | 93 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | 20 | 6 | 0 | 38 |
| 2021 | 78 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21 | 11 | 2 | 34 |
| 2022 | 26 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 0 | 9 |
| 2023 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 511 | 2 | 6 | 10 | 19 | 17 | 16 | 34 | 28 | 48 | 34 | 4 | 218 |

Table 40:
TIME TAKEN FOR GRANT OF INTERIM COMPENSATION FROM DATE OF FIR

| Time Taken (in months) | No. of Cases |
|------------------------|--------------|
| Within 1 Month | 20 |
| 1 to 3 Months | 25 |
| 3 to 6 Months | 44 |
| 6 to 9 Months | 27 |
| 9 to 12 Months | 19 |
| 12 to 15 Months | 19 |
| 15 to 18 Months | 8 |
| 18 to 21 Months | 18 |
| 21 to 24 Months | 7 |
| 24 to 36 Months | 16 |
| > 36 Months | 15 |
| Total | 218 |

- Interim Compensation is granted in 218 out of 511 cases, i.e. 43% cases
- Only in 9% of these, it is granted within 1 month of FIR
- About 53% cases have taken anywhere between 1 to 12 month(s)
- 24% cases have taken between 12 to 24 months
- It took more than 2 years in 7% cases and more than 3 years in another 7% cases

Victim Compensation

Table 41:
GRANTING INTERIM COMPENSATION: THE LAW AND THE PROCESS

| <i>Interim Compensation</i> | <i>Filed before the Special Court + Granted by the Special Court + Amount of compensation also decided by the Special Court</i> | <i>Filed before the Special Court + Special Court forwarded to DLSA for further action (to decide on whether to grant or not as well the amount)</i> | <i>Filed before DLSA + Awarded by DLSA</i> |
|--|---|--|--|
| u/s 357A CrPC | 5 | 7 | 7 |
| Rule 7 POCSO Rules | 106 | 4 | 6 |
| u/s 33(8) POCSO Act | 9 | 0 | 0 |
| u/s 33(8) POCSO Act r/w Rule 7 POCSO Rules | 29 | 0 | 1 |
| Rule 9 (3) POCSO Rules, 2020 r/w section 33 (8) POCSO Act | 44 | 0 | 0 |

Table 42:
**TIME TAKEN FROM DATE OF GRANT OF INTERIM COMPENSATION TO DISBURSEMENT / RECEIPT OF INTERIM
COMPENSATION IN THE CHILD'S BANK ACCOUNT**

| <i>Time Taken (in months)</i> | <i>No. of Cases</i> |
|-------------------------------|---------------------|
| Within 1 Month | 3 |
| 1 to 3 Months | 37 |
| 3 to 6 Months | 46 |
| 6 to 9 Months | 50 |
| 9 to 12 Months | 18 |
| 12 to 15 Months | 19 |
| 15 to 18 Months | 12 |
| 18 to 21 Months | 5 |
| 21 to 24 Months | 1 |
| 24 to 36 Months | 3 |
| > 36 Months | 3 |
| Total | 197 |

Table 43:
NO. OF DAYS LAPSED SINCE GRANT OF INTERIM COMPENSATION (DISBURSEMENT PENDING AS ON 28 FEBRUARY 2023)

| <i>Time Taken (in months)</i> | <i>No. of Children</i> |
|-------------------------------|------------------------|
| Within 1 Month | 2 |
| 1 to 3 Months | 3 |
| 3 to 6 Months | 5 |
| 6 to 9 Months | 2 |
| 9 to 12 Months | 3 |
| 12 to 18 Months | 2 |
| > 18 Months | 4 |
| Total | 21 |

Victim Compensation

Table 44:
INTERIM COMPENSATION DISBURSEMENT PENDING AS ON 28 FEBRUARY, 2023 - REASONS FOR DELAY

| <i>Case ID</i> | <i>Reasons</i> |
|-----------------------|--|
| 15DEL071/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 17DEL115/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 17DEL024/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 17DEL075/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 20DEL126/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 20DEL293/PSY-SO/LEGAL | Earlier Bank Account of the child has been closed. Now the support person has received an order from the CWC to help the child open a new bank account. |
| 20DEL359/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 20DEL308/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 21DEL150/PSY-SO/LEGAL | Family belonged to Nepal and therefore did not have the necessary documents to open a bank account for the child in India. Family has now shifted to Nepal as they could not find any work in India to sustain themselves. |
| 21DEL203/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 21DEL211/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 18DEL008/PSY-SO/Legal | Family refused compensation. |
| 19DEL046/PSY-SO/LEGAL | File not received by DLSA from the court. |
| 21DEL148/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 21DEL224/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 21DEL310/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 22DEL176/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 16DEL043/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 22DEL365/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 22DEL540/PSY-SO/LEGAL | All documents have been prepared for submission to DLSA. |
| 22DEL576/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |

Victim Compensation

Table 45:
FINAL COMPENSATION

| Year of FIR | No. of Cases | Year of Grant | | | | | | | | | | | Total |
|--------------|--------------|---------------|----------|----------|----------|----------|----------|-----------|-----------|----------|-----------|----------|-----------|
| | | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | |
| 2012 | 5 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 2 |
| 2013 | 15 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 4 | 0 | 1 | 0 | 6 |
| 2014 | 14 | 0 | 0 | 0 | 0 | 2 | 0 | 2 | 2 | 0 | 0 | 0 | 6 |
| 2015 | 75 | 0 | 0 | 0 | 1 | 2 | 1 | 2 | 3 | 5 | 7 | 0 | 21 |
| 2016 | 51 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 3 | 1 | 4 | 1 | 12 |
| 2017 | 40 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 3 | 0 | 6 |
| 2018 | 57 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 3 | 0 | 5 |
| 2019 | 57 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| 2020 | 93 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| 2021 | 78 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2022 | 26 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2023 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 511 | 0 | 0 | 0 | 1 | 5 | 3 | 10 | 13 | 7 | 22 | 1 | 62 |

- Final Compensation is granted in 62 out of 121 disposed cases
- 56 (90%) of these are cases that have ended in conviction, 3 ended in acquittal and 2 were abated.
- In one of the cases that ended in acquittal at the trial court level, the matter was appealed in the High Court, where acquittal was turned into a conviction and compensation has been granted.

Table 47:
GRANTING FINAL COMPENSATION: THE LAW AND THE PROCESS

| <i>Final Compensation</i> | <i>Filed before the Special Court + Granted by the Special Court + Amount of compensation also decided by the Special Court</i> | <i>Filed before the Special Court + Special Court forwarded to DLSA for further action (to decide on whether to grant or not as well the amount)</i> | <i>Filed before DLSA + Awarded by DLSA</i> |
|---|---|--|--|
| u/s 357A CrPC | 24 | 3 | 1 |
| Rule 7 POCSO Rules | 1 | 0 | 0 |
| u/s 33(8) POCSO Act | 2 | 0 | 0 |
| u/s 33(8) POCSO Act r/w Rule 7 POCSO Rules | 14 | 0 | 0 |
| Rule 9 (3) POCSO Rules, 2020 r/w section 33 (8) POCSO Act | 11 | 0 | 0 |
| 9 (2) POCSO Rules, 2020 r/w section 357 CrPC | 6 | 0 | 0 |

Victim Compensation

Table 46:
TIME TAKEN FROM DATE OF GRANT OF FINAL COMPENSATION TO DISBURSEMENT / RECEIPT OF FINAL COMPENSATION IN THE CHILD'S BANK ACCOUNT

| <i>Time Taken (in months)</i> | <i>No. of Cases</i> |
|-------------------------------|---------------------|
| Within 1 Month | 0 |
| 1 to 3 Months | 12 |
| 3 to 6 Months | 9 |
| 6 to 9 Months | 9 |
| 9 to 12 Months | 7 |
| 12 to 15 Months | 5 |
| 15 to 18 Months | 2 |
| 18 to 21 Months | 0 |
| 21 to 24 Months | 1 |
| 24 to 36 Months | 1 |
| > 36 Months | 1 |
| Total | 47 |

Table 48:
NO. OF DAYS LAPSED SINCE GRANT OF FINAL COMPENSATION (DISBURSEMENT PENDING AS ON 28 FEBRUARY 2023)

| <i>Time Taken (in months)</i> | <i>No. of Children</i> |
|-------------------------------|------------------------|
| < 1 Month | 1 |
| 1 to 3 Months | 0 |
| 3 to 6 Months | 4 |
| 6 to 9 Months | 4 |
| 9 to 12 Months | 1 |
| 12 to 18 Months | 2 |
| > 18 Months | 3 |
| Total | 15 |

- In cases where final compensation has been received by the child, disbursement took anywhere
 - between 1 to 6 month(s) since grant of compensation in 45% cases
 - between 6 to 12 months in 34% cases
 - between 1 to 2 year(s) in 17% cases
 - More than 2 years in 4% cases
- In 24% (15) cases disbursement of compensation is pending as on 28 February, 2023



Victim Compensation

Table 49:
FINAL COMPENSATION DISBURSEMENT PENDING AS ON 28 FEBRUARY, 2023 - REASONS FOR DELAY

| <i>Case ID</i> | <i>Reasons</i> |
|-----------------------|--|
| 15DEL016/PSY-SO/LEGAL | Pending for police verification. |
| 15DEL069/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 16DEL004/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 16DEL021/PSY-SO/LEGAL | All documents have been submitted. Police verification is also completed. DLSA is yet to pass the order for disbursement. |
| 16DEL030/PSY-SO/LEGAL | Bank and PAN card have been prepared. Child needs to be taken to DLSA. Notice from DLSA is awaited for the same. |
| 16DEL056/PSY-SO/LEGAL | Correction in the court order is required. Listed in court for the same on 06.03.2023. |
| 16DEL062/PSY-SO/LEGAL | Order for compensation is very recent, dated 23 February, 2023. Bank account details and other documents need to be submitted in the DLSA. |
| 13DEL003/PSY-SO/LEGAL | Bank account has been rejected by DLSA. A new account has to be opened. |
| 19DEL138/PSY-SO/LEGAL | All documents have been submitted. Police verification is also completed. DLSA is yet to pass the order for disbursement. |
| 15DEL010/PSY-SO/LEGAL | All documents have been submitted. Police verification is also completed. DLSA is yet to pass the order for disbursement. |
| 16DEL007/PSY-SO/LEGAL | Final Compensation order not received by DLSA from the court. |
| 17DEL078/PSY-SO/LEGAL | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 16DEL131/PSY-SO/LEGAL | File closed by DLSA and sent back to JJB to decide the compensation amount and status application filed in the JJB is pending. |
| 18DEL010/PSY-SO/Legal | All formalities completed. DLSA is yet to pass the order for disbursement. |
| 21DEL017/PSY-SO/LEGAL | Final Compensation order not received by DLSA from the court. |

Psychosocial Impact and Support

This factsheet concludes the document with information on aspects of psychosocial impact, support and how families make an effort to move forward. Tables 50-59 provide details of shelter and witness protection support, medical support, education and financial support, support for family needs, and so forth. Three case stories have been included to share some experiences of the HAQ team while addressing the cases.

Table 50:
SHELTER & WITNESS PROTECTION SUPPORT

| Shelter and Protection Need | No. of Children |
|--|------------------------|
| Assistance provided to family to apply for witness protection | 8 |
| Incest case - child placed in a shelter home | 6 |
| IO/ Police/ Court informed about the threats faced by the child | 52 |
| Family members counselled due to their hostility towards the child | 4 |
| Family had to be relocated for safety reasons | 14 |
| Home study carried out before restoration of child from shelter home to family | 23 |
| Child and sibling placed in a shelter home for various reasons such as safety | 5 |
| Child placed with maternal family | 1 |
| Regular follow up carried out to ensure safety of the child and family | 9 |
| Total | 122 |

Table 51:
MEDICAL SUPPORT

| Medical Need | No. of Children |
|---|------------------------|
| Assistance throughout pregnancy and safe delivery | 11 |
| Assisted child for Psychological assessment (IQ) | 16 |
| Assisted child for Thyroid and other related tests | 1 |
| Assisted for skin infection treatment | 1 |
| Assisted for the treatment of kidney stone | 1 |
| Assisted with physiotherapy for back pain | 2 |
| Colostomy related surgery and post operative care and follow up | 6 |
| Complaints about pains, rashes, scabies, acne, blisters, menstrual disturbance, irritation etc. | 2 |
| Emotional support and assistance for MTP | 7 |
| Help in procuring the hearing aid for the child | 1 |
| Infection on shoulder | 1 |
| Pain and rashes in private parts | 2 |
| Psychiatric Treatment | 10 |
| Right Eye Operation | 1 |
| Surgery due to injuries in private part | 2 |
| Treatment for burns caused due to spilling of hot tea on knees | 1 |
| Treatment for continuous stomach pain, body aches and headaches | 12 |
| Treatment for drugs de-addiction and rehabilitation + Screening for HIV/AIDS | 3 |
| Treatment for epilepsy | 3 |
| Treatment for pain in private parts | 25 |
| Treatment for Ranula Cyst | 1 |
| Treatment of physical injury | 6 |
| Total | 115 |

Psychosocial Impact and Support

Table 52:

EDUCATIONAL SUPPORT FOR CHILDREN WHO DROPPED OUT OF SCHOOL DUE TO THE INCIDENT

| Current Status | 84 Children |
|------------------------|---|
| Resumed studies | 37 are back to regular school |
| | 17 enrolled in NIOS |
| | 13 enrolled in vocational training |
| | 4 are back to regular school and have also joined a vocational course |
| | 1 admitted in special school after identifying cognitive difficulties |
| Did not resume studies | 3 have not resumed their studies despite efforts |
| | 3 girls were married off as soon as they turned 18 |
| Efforts ongoing | In 6 cases efforts are still ongoing |

Table 53:

EDUCATIONAL SUPPORT FOR CHILDREN WHO DROPPED OUT OF SCHOOL OR HAD NEVER BEEN TO SCHOOL BEFORE THE INCIDENT

| Current Status for children who dropped out of school before the incident | 51 children |
|---|---|
| | 6 enrolled in NIOS instead of regular schooling |
| | 1 enrolled in NIOS and vocational training. |
| | 6 enrolled in vocational training |
| Resumed studies | 13 are back to regular school |
| | 2 have been admitted in special school after identifying cognitive difficulties |
| | 3 attending tuition classes for basic learning |
| Did not resume studies | 12 have not resumed their studies (2 - due to psychiatric illness, 2 child is no more, 7 are not interested, 1 got married as soon as she turned 18) |
| Efforts Ongoing | In 8 cases efforts are still ongoing |
| Current Status for children who had never been to school before the incident | 21 children |
| Resumed studies | 15 admitted in school |
| | 1 enrolled in vocational course |
| Did not resume studies | 2 are not interested, 2 are not traceable |
| Efforts Ongoing | In 3 cases efforts are ongoing |

Psychosocial Impact and Support

Table 54:
CHANGE OF SCHOOL DUE TO THE INCIDENT

| Current Status | 12 children |
|--------------------------------|--|
| Changed school due to incident | All 12 children are attending regular school |

Table 55:
OTHER EDUCATIONAL SUPPORT FOR CHILDREN WHO CONTINUED WITH THEIR EDUCATION

| Current Status | 15 children |
|-------------------------------|---|
| Support beyond school | One child was helped in completing assignments while pursuing Graduation A child in a CCI was escorted to school during exam time as the CCI did not have staff to accompany the child |
| Home Tuition | Home tuition was arranged for one child with the help of TFI as child was weak in studies |
| Special Educator | One Special Educator arranged for the child to help the child cope with school curriculum |
| Motivation to continue school | 10 children were regularly motivated to continue with their school education as they had a tendency to avoid school or drop out |
| Text Book Support | Arranged 11th standard and 9th standard text books for two children |

Table 56:
EMOTIONAL / PSYCHOLOGICAL SUPPORT

| Emotional / Psychological Need | No. of Children |
|---|------------------------|
| Primary Care - Emotional concerns and anxieties identified and handled by HAQ's social worker | 49 |
| Secondary Care - Counselling need identified and met through HAQ's in-house counsellor | 241 |
| Tertiary Care - Assistance provided for psychiatric treatment/psychotherapy and follow-up | 25 |
| Total | 315 |



Psychosocial Impact and Support

Table 57:
PARALEGAL SUPPORT

| <i>Paralegal Needs</i> | <i>No. of Cases</i> |
|--|---------------------|
| Sensitization of police where family was not getting adequate support from the police | 12 |
| HAQ's Social worker assisted the child for testimony preparation (Pre-trial court visits of the child were arranged in 48 cases) | 264 |
| Helped the family procure basic case related documents such as copy of FIR, MLC | 26 |
| Total | 302 |

Table 58:
FINANCIAL SUPPORT

| <i>Financial Needs</i> | <i>No. of Cases</i> |
|--|---------------------|
| Follow-up on application for interim compensation filed by IO/ DLSA/DCW | 139 |
| Filing application for interim compensation and follow-up by HAQ's social worker | 79 |
| Filing application for final compensation and follow-up by HAQ's social worker | 62 |
| Total | 280 |

Table 59:
SUPPORT FOR FAMILY NEEDS

| <i>Family Needs</i> | <i>No. of Cases</i> |
|---|---------------------|
| Counselling for family member(s) undergoing trauma after the incident | 25 |
| Counselling / care and safety of the child ensured where violence is reported in the family towards the child | 13 |
| Assistance to the mother of the child for action on a domestic violence complaint | 8 |
| Counselling for mothers of children who have faced incest abuse to encourage them to take up a job | 13 |
| Counselling and sharing information about de-addiction centres in cases where the child has an alcoholic parent/sibling in the family | 7 |
| Total | 66 |

Stories of Successes & Challenges

CASE
STORY

What children have to endure when family restorations are not planned and there is no follow-up

Ruhani (name changed) was adopted by her paternal uncle and aunt (*chacha and chachi*) as they were unable to have their own biological child. She was 5-6 years old when she came to her new home and slowly became a part of the family. She was enjoying her new life, had started going to school, made friends and dreamed of joining the Indian Navy until her life took a tragic turn when she was 14 years of age. Her adoptive father (also her paternal uncle) started abusing her sexually. It all started when she hit puberty and her aunt got busy with taking care of her new born. Her adoptive father would abuse her sexually and plead not to disclose it, manipulating her mind into believing that her aunt could have a heart attack if it was disclosed. Ruhani thus kept silent. A few months later, in 2017 a case was registered against her adoptive father under the POCSO Act after she was taken to a doctor because she had suddenly started bleeding profusely and it was discovered that she had been pregnant. Upon registration of the FIR, there was a lot of pressure on the child to withdraw the case. Even her biological parents refused to support her. With no one to take her responsibility, the Child Welfare Committee (CWC) placed her in a Child Care Institution (CCI).

With sudden turn of events and no support from her family, Ruhani felt betrayed and experienced trauma. She needed intensive counselling. As the CWC directed HAQ to provide support person services to the child, HAQ's in-house counsellor provided the counselling support and it was ensured that she enrolled in a school again. A lawyer was also provided to represent the child during trial. Ruhani slowly started to settle down in the CCI. She made friends and was happy again. About two years later, in 2019, she gave her testimony in the court.

Before the testimony, Ruhani's biological father approached the CWC for her custody. Following the

"Principle of institutionalisation as a measure of last resort" and the "Principle of repatriation and restoration" outlined in Section 3 of JJ Act, 2015, the CWC deemed it to be in the best interest of the child to restore Ruhani to her biological parents, without even considering the facts and circumstance of the case. It was with great difficulty that the support person from HAQ managed to convince the CWC to keep the child in the CCI until her testimony and till her counselling continued. However, as soon as the child's testimony was over, Ruhani was restored to her parents in Bihar without any intimation or information to the child's support person from HAQ.

HAQ is not against restoration of children to their family and at HAQ, we strongly believe that institutionalisation should be the last resort. However, we are also of the opinion that it should not be done mechanically without following due process and in violation of the principle of child's best interest, which is seldom understood and applied.

Till the time Ruhani was living in Delhi, HAQ's support person was constantly in touch with her and updated her about her legal case, and worked towards ensuring that her rehabilitation needs are fulfilled. After the child's restoration to her parents in Bihar, the support person lost contact with the child. With much effort, a contact number was found for Ruhani's parents and when the support person contacted them, it was learnt that child had not been admitted in any school and her parents had again started pressurising her to withdraw the case. The support person tried to explain to the father that there should be no pressure on the child as it would affect her mental health. The father agreed, but it did not last long. Later, the support person found out that Ruhani had run away from her home and her parents had no idea about her whereabouts.

An irrational approach of the CWC can pose serious challenges for children and organisations engaged in their rehabilitation and reintegration.

Stories of Success & Challenges

With constant efforts, HAQ's team was able to trace the child and has continued to maintain contact with her. However, Ruhani's is not the only such case where restoration has gone wrong.

In Mahima's (name changed) case also, after her testimony in 2019, the Child Welfare Committee restored her to her biological parents in Jharkhand. Reason given was that her biological father has given an application seeking custody of the child. The CWC did not dwell into why all of a sudden the child's biological father was interested in her custody when he had not seen or met the child even once post his separation from his wife. After the restoration, the support person was in continuous touch with the child, but the child's struggles increased manifold post restoration. Initially, everything was ok but soon her father and stepmother started taunting her, refused to enrol her in a school or a vocational course. At times, in a drunken state, her father would verbally abuse her.

Seeing this, Mahima's elder brother took her to his home, but could not keep her there for long. She then shifted to another elder brother's house, who agreed to enrol her in a vocational course. Things seemed all right until COVID hit the country and he lost his job, and Mahima was asked to go back to her father. During the pandemic her brother consumed all the money Mahima had received by way of interim compensation.

Wherever she lived, there was constant conflict between her and the family members and Mahima would also be subjected to physical beatings if she wouldn't obey them. Later, Mahima's maternal aunt (*mausi*) came forward to take her responsibility and admitted her in a school. But, the child had to suffer a lot before she could settle down. What if her aunt wasn't ready to keep her or take her responsibility?

There are many occasions when HAQ's team finds itself in conflict with the decisions taken by the CWC. The challenges multiply when children are restored without proper inquiry and the support person assigned by the

CWC has no information or contact with the child to continue working on their rehabilitation needs.

After her restoration, Mahima was just moving from one home to another and this went on for almost two years till she settled down with her aunt. But the question still remains – is restoration to parents the best possible rehabilitation for a child in all situations?

Some more questions require serious reflection by all stakeholders, especially those in responsible positions taking decisions for children.

What is more important—child or a routine procedure?

Which "Guiding Principle" outlined in the JJ Act requires primary consideration?

What should be the guiding factors for deciding the question of best interest of the child?

How to weigh and harmonise the guiding principles?



Stories of Successes & Challenges

CASE
STORY

Incest abuse requires a different approach

“Mujhe case nahi karna didi, wo log mummy ko jail me band kar denge, isiliye mujhe case nahi karna”, said Durga (name changed) who was placed in a Child Care Institution (CCI) after her case was reported. When the support person first met her in the CCI, she was injured and had fractured her left hand. Anxious and teary-eyed throughout the meeting, she said that the support person was the first outside person she was meeting ever since she was placed in the CCI as she was not allowed to meet her mother and younger brother. She was missing her mother and wanted to meet her at least once.

17-year-old Durga’s family belongs to Bihar. Durga came to Delhi along with her mother and younger brother to Delhi to escape an alcoholic and violent father, who would constantly subject her mother to physical abuse. She thought she had her elder brother’s house in Delhi and was happy to shift. She wanted to resume her studies and help her mother earn better. Durga’s mother too had hoped a better future for herself and her children. However, fate had something else in store for Durga, who started facing sexual and physical assault from her elder brother a few months after they moved into his house. He abused Durga for almost three years until her case was reported in 2019.

Durga’s brother would beat her up if she resisted or cried. For the first one year, Durga didn’t know what was happening to her until her friends explained it to her that it was something that should not happen. But she could not inform anyone. When she started feeling ill and realised that she was pregnant, she mustered the courage to inform about the abuse to her mother. Scared of her own son, instead of taking any action against him, Durga’s mother ordered Durga to ask her brother to bring her pills for abortion. The pregnancy was thus terminated at home.

Durga was devastated. It was affecting her physical and mental health. To avoid further abuse, Durga’s mother started taking her to work along with her. One of her mother’s employers offered to send Durga for work in Bangalore. Both Durga and her mother saw it as an opportunity to escape from the abuse and Durga was sent off to Bangalore, much to her elder brother’s annoyance. Her brother would call Durga and ask her to come back to Delhi and would visit the mother’s employer to bring Durga back. On the other hand, Durga had started liking being in Bangalore, away from her brother. Fed up of the persistent calls from her brother, Durga one day fought with him and her mother and told them that she did not want to come back because of her brother’s actions. This further angered her brother and he started creating nuisance for her mother’s employer, who had sent Durga to Bangalore. Eventually, Durga was sent back to Delhi.

After her return, Durga’s brother started abusing her again and would beat her even more if she resisted. He became possessive and would not allow Durga to talk to anyone. Durga slowly resigned to her fate. Later, she started working with a family as a baby sitter. One day, when her brother saw Durga talking to her employer’s husband, he got angry and beat her up, and fractured her hand. He didn’t take Durga to a doctor for treatment. The very next day, Durga went to work in her injured condition. When a doctor, her employer inquired from Durga about her condition, which is when Durga narrated her ordeal to her employer. The employer helped her to register an FIR and her brother was arrested.

Durga’s challenges however, did not end here. After the FIR, she was placed in a CCI. Her mother and younger brother were not allowed to meet her. She now had to make a decision about whether she should pursue the case at the risk of losing her entire family or withdraw the case and be with her mother and younger brother again. In incest cases, especially where

Stories of Successes & Challenges

there is no family support, it becomes difficult for a child to take such decisions. They constantly face the dilemma about going against their own family. They have to make a choice between self and family and in the absence of psychosocial support in such cases, children often turn hostile in court.

Durga wanted the abuse to stop, but did not want to lose her mother. After the registration of FIR, the Investigation Officer also framed charges against her mother for failure to report the abuse when she knew about it. Durga did not want any harm to her mother as she was aware that if her mother is jailed there would be no one to take care of her younger brother, who was only 9-10 years old.

HAQ was providing constant support to Durga during this time. HAQ's team of social worker, counsellor and lawyer helped Durga take a decision, ensuring her that her decision would be respected, whatever that may be. Durga would constantly seek clarification with respect to her legal case. After much discussion, Durga took the tough decision to pursue the legal case and fight for her rights. She also agreed to take legal assistance from HAQ. Since she was happy in the CCI, she was encouraged to take up a vocational course. Following the advice, Durga joined a course in beauty culture offered at the CCI. HAQ's in-house counsellor also provided continuous counselling to Durga to overcome her trauma. There were times when Durga would feel all alone and doubted her decision. She would call HAQ team members to seek assurance.

HAQ team continued to provide psychosocial and legal support to Durga, which helped her fight for her rights and brought a positive change in her life. Durga had to leave the CCI after she turned 18 years of age. Having completed a course in beauty culture, Durga now works in a salon and lives independently. HAQ had filed for interim compensation for Durga when she turned 18 years of age so that Durga could sustain herself till found a suitable job.

Durga is now 22 years old and is in regular touch with HAQ. She would have surrendered to her family had she not received the support she needed at different stages in her life. In cases of sexual abuse, especially in incest abuse cases, it becomes very important to provide constant support to children, even through their initial years of transition into adulthood.

The follow-ups are so crucial. For CWCs, CCIs, District Child Protection Units (DCPUs) and even the courts, everything is over once a file is closed. But children and victims or survivors of abuse are not just a case number or a case file; their life and struggles do not necessarily end with the closure of their case file. Incest abuse makes it even more difficult as they may not have a family to go back to. Unless supported enough to manage their crisis and become resilient, they could well remain miserable for the rest of their life.



Stories of Successes & Challenges

CASE
STORY

Challenges that have no easy answers

Preparing a disability certificate is not an easy task and while doing this HAQ team came across many challenges. It requires multiple visits to hospital, and different speciality doctors to get a disability certificate. Often people who are not very educated or have other daily struggles to keep up with, end up surrendering the chase.

Dhruv (name changed) was 9 years old when his case was marked to HAQ for providing support person services. He was sexually abused by an unknown man, who lived near his house. On the day of the incident, Dhruv went out to play as usual, but when he did not return, his mother went out to look for him and found him near a park on the way to their house. Dhruv's was found crying because the accused had beaten him up and there were bruises around his ribs. Dhruv has speech difficulties and cannot communicate like other children his age, though his parents understand he says. He told everything to his parents about the physical and sexual assault. Since the alleged accused was unknown to the child, his parents then took him to the place of incident and nearby to identify the person, which he did. His parents then immediately filed an FIR.

When the HAQ team met Dhruv for the first time, they observed that he is a special needs child. Upon enquiring from the parents if they are aware about the child's situation and if the child taking any treatment, Dhruv's mother shared that Dhruv had speech difficulties. He started speaking very late in his childhood and they had also taken him to a hospital, but the doctor had told them that Dhruv was fine and would develop speech as he grew up. Doctor did not suggest any treatment or speech therapy and the parents never consulted anyone else thereafter. Dhruv's parents then admitted him in a regular school with the hope that he will learn to speak if he will be in

the company of other children of his age. However, nothing changed and as time passed, his academic performance went on a decline.

HAQ team then explained to the parents that their child is a "child with special needs" and requires proper assessment to understand and identify the problems. Since his parents are not very educated, they requested HAQ for support for the assessment. The parent were assured of every possible assistance for the assessment and that they will also be helped in applying for a disability card for Dhruv, if applicable, which could then fetch him a disability pension.

Usually people do not understand disability and related issues. It is a general view or rather a myth that children grow out of their special needs, but on the contrary, if timely interventions are not provided, their condition could become even more severe. Dhruv's situation was no different. Since no intervention was provided to him at an early age, Dhruv's speech never developed. When HAQ's counsellor met Dhruv, he was drooling, not able to hold a pencil properly, his speech was monosyllable but not clear. Upon further enquiry from his parents, HAQ found that he could even dress himself up and eat properly, and required his mother's help for the same. Further suspecting that Dhruv may have moderate intellectual disability, HAQ informed the concerned CWC about Dhruv's condition and requested for an order for the child's assessment. Upon receiving the order, the child was taken for a psychological and IQ assessment to RML Hospital. Shockingly, the consulting psychologist mentioned in her report that the child has psychological issue and his IQ is normal.

HAQ's in-house counsellor, who is a trained clinical psychologist, again approached the psychologist at the hospital and requested for a re-assessment. Initially, the psychologist was not ready to accept that her assessment could be doubted, but when she was asked

Stories of Successes & Challenges

to show the tests conducted on the child and on pointing out certain gaps in the assessment, the psychologist agreed for a re-assessment.

At times, the mechanical way of conducting such assessments can also cause great damage to a child's case. That is what happened in Dhruv's case, where as per the assessment of HAQ's counsellor, the child had moderate intellectual disability, but when the psychologist at the hospital conducted the assessment, she put the child in the borderline category, which implied that the child is a normal child and has no disability. It would have gone unnoticed if HAQ's counsellor had not pointed out certain things to the parents and then taken it up with the psychologist at the hospital. The parents had just accepted the assessment report without questioning it. A wrong assessment also means that the child cannot avail the benefits of any schemes for persons with disability. One wonders in how many such cases the assessments go wrong due to a mechanical process followed by well qualified but probably overburdened doctors or insensitive doctors.

After the re-assessment, Dhruv's report reflected that he has moderate intellectual disability with an IQ of 39.

Getting the IQ assessment done was the first step to file for disability certificate. Later, the HAQ team applied for Dhruv's disability certificate through the online portal with the following link - <https://www.swavlambancard.gov.in/pwd/application>. After registering online, the form was physically taken for submission in the hospital where child's IQ assessment was done. But the hospital refused to accept the form citing that the child's residence does not fall in their jurisdiction. The hospital authority did not share any further information.

HAQ team then looked for a government hospital near the child's residence, which also had to be a hospital authorised to issue a disability certificate. After much effort, in July 2022 HAQ team was able to find a child's

government hospital near the child's home and the IQ assessment report and online registration form were submitted in the hospital. The team was informed that the child would be called for further assessment. However, no call was received from the hospital until October 2022. HAQ team had been regularly following up with the hospital only to hear that a date for assessment would be given soon.

The first date for further assessment was given by the hospital in December 2022, but at that time the child's family had gone to their native village for some personal work. HAQ team visited the hospital again to reschedule the appointment. A new appointment was given for January 2023.

In January 2023, HAQ's social worker visited the hospital along with the child. The concerned doctor explained the process and informed that before issuing of disability certificate the following assessments are required from different specialists – IQ assessment, Occupational Therapy/Physical Therapy (OT/PT) test, Speech Therapy, an MRI of the brain and a disability certificate is issued by a Medical Board after evaluation of all these tests. Around seven more visits had to be made to the hospital by the child, his family and HAQ's social worker to get these tests conducted and to collect the reports and finally, a disability certificate could be procured for the child.

It took almost one and a half years to get a Disability Certificate for Dhruv. The tedious process is not easy for people to follow and often they either give up or pay to touts and cyber cafes in the process. At the hospital, there is no one to guide people who want to apply for a disability certificate of disability pension.



Abbreviations & Acronyms

| | | | |
|--------------------|--|--------|--|
| ACP | Assistant Commissioner of Police | MM | Metropolitan Magistrate |
| AIIMS | All India Institute of Medical Sciences | MTP | Medical Termination of Pregnancy |
| APP | Assistant Public Prosecutor | NCPCR | National Commission for Protection of Child Rights |
| APSA | Aggravated Penetrative Sexual Assault | NGO | Non-Governmental Organisation |
| ASA | Aggravated Sexual Assault | NIOS | National Institute of Open Schooling |
| ASJ | Additional Sessions Judge | No. | Number |
| CCI | Child Care Institution | Ors | Others |
| CCL | Child in Conflict with the Law | P.M. | Principal Magistrate |
| COVID | Corona Virus Disease | PAN | Permanent Account Number |
| Cr.P.C./Cr.PC/CrPC | Code of Criminal Procedure | PCR | Police Control Room |
| CWC | Child Welfare Committee | PE | Prosecution Evidence |
| DCP | Deputy Commissioner of Police | PIL | Public Interest Litigation |
| DCW | Delhi Commission for Women | PO | Proclaimed Offender |
| DHJS | Delhi Higher Judicial Services | POCSO | Protection of Children from Sexual Offences |
| DLSA | District Legal Services Authority | PSA | Penetrative Sexual Assault |
| DNA | Deoxyribo Nucleic Acid | PSY-SO | Psycho-social |
| DSLSA | Delhi State Legal Services Authority | PW | Prosecution Witness |
| FIR | First Information Report | SA | Sexual Assault |
| FSL | Forensic Science Laboratory | SCPCR | State Commission for Protection of Child Rights |
| FTSC | Fast Track Special Court | SH | Sexual Harassment |
| HC | High Court | SHO | Station House Officer |
| HIV/AIDS | Human Immunodeficiency Virus/Acquired Immuno-Deficiency Syndrome | SPP | Special Public Prosecutor |
| IO | Investigating Officer | TFI | Teach For India |
| IPC | Indian Penal Code | u/s | Under Section |
| IQ | Intelligence Quotient | UTP | Under-Trial Prisoner |
| JC | Judicial Custody | VC | Video Conferencing |
| JCL | Juvenile in Conflict with the Law | Vs | Versus |
| JJ Act | Juvenile Justice (Care and Protection of Children) Act | VT | Victim Testimony |
| JJB | Juvenile Justice Board | VWDR | Vulnerable Witness Deposition Room |
| Ld. | Learned | yrs | years |
| MLC | Medico-Legal Case | | |

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Prior edition of the Factsheets can be [accessed here](#)

Case stories of successes & challenges: first hand instances experienced by HAQ team members

Read more about HAQ: Centre for Child Rights' work on www.haqcrc.org

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